



# COUNTY OF HUMBOLDT

For the meeting of: 2/1/2022

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File #: 22-113

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

**From:** Planning and Building Department

**Agenda Section:** Public Hearing

**SUBJECT:**

Humboldt's Own LLC appeal of the Planning Commission's addition of a condition requiring a second water source to an approved well as part of the conditional approval of a special permit to allow 64,800 square feet of 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 21-\_\_). (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 Humboldt's Own LLC project; and
  - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
  - c. Approves the appeal submitted by Humboldt's Own LLC; and
  - d. Approves the 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 is an appeal of the Humboldt County Planning Commission's Oct. 21, 2021, approval of the Humboldt's Own LLC Special Permit by a unanimous vote (Yes: Bongio, Mulder, Newman, O'Neill, Mitchell, McCavour). Humboldt's Own is appealing the decision to add a condition of approval requiring 50% of the annual water demand for 40,000 square feet of the cultivation to be provided

from rainwater catchment or additional water storage. The Planning Commission condition would require 166,000 gallons of water storage (40,000 [new growth + RRR] x 8.3 gallons/SF x 50%). The Planning and Building Department supports the appeal.

The application is a special permit for 24,800 square feet (SF) of outdoor cannabis cultivation and 9,800 square feet (SF) of new outdoor cannabis cultivation, and a special permit for 30,200 SF of cultivation being transferred from a Retirement, Relocation, and Remediation (RRR) site to the property. Total permitted cultivation would be 64,800 SF, with appurtenant propagation and drying activities. Propagation occurs in four 2,496-SF greenhouses, totaling 9,984 SF.

The source of water for irrigation is an onsite permitted well (No. 16/17-0721). Total estimated annual water use is 540,000 gallons (8.3 gal/SF). There is no onsite water storage for irrigation purposes; however, the project area includes 10,000 gallons of permanent water storage for fire suppression. The applicant plans to increase storage for fire suppression by 40,000 gallons via 10 5,000-gallon tanks at the beginning of next year.

Drying will occur in a 7,200-SF facility onsite. Further processing occurs offsite at a licensed third-party facility. The project requires a maximum of 15 employees during peak staffing season, which lasts for approximately 6 to eight 8 weeks. Electrical power is provided by PG&E.

The project is located at 702 Chambers Road, approximately 1 mile southeast of the unincorporated community of Petrolia.

The appellant filed a timely appeal of the Planning Commission decision on Nov. 3, 2021. The appellant believes that the requirement for rainwater catchment is excessive and not justified under the county ordinance. The appeal is addressed in more detail below.

### Project History

The appellant applied for a conditional use permit (CUP) under the Commercial Medical Marijuana Land Use Ordinance (Ordinance 1.0) on Dec. 13, 2016, for 24,800 square feet of cultivation that was in existence prior to Jan. 1, 2016. The site has been operating with an Interim Permit since Sept. 24, 2018.

On June 26, 2018, the applicant applied to retire existing cultivation on property in the Panther Gap area and relocate it to the subject site. The original application was for 40,000 square feet of cultivation to be relocated, but examination of the pre-existing cultivation determined that there was 30,200 square feet of pre-existing cultivation on the retirement parcel.

The receiving property is eligible for new cultivation under the Commercial Cannabis Land Use Ordinance (Ordinance 2.0) and the additional 9,800 square feet requested by the applicant was revised to proposed new cultivation on the property. The CCLUO allows up to an acre of new cultivation and thus the existing cultivation can be expanded with new cultivation and an RRR can be added to that area. The application was converted to a CCLUO (Ordinance 2.0) application for 24,800 square feet of

existing outdoor cultivation, and a special permit for 30,200 SF of cultivation being transferred from a Retirement, Relocation, and Remediation (RRR) site and 9,800 SF of new outdoor cultivation. The total amount would be 64,800 SF, with appurtenant propagation and drying activities and a total of 9,984 SF of propagation. When the application was presented to the Planning Commission, planning staff recommended approval of only 6,480 square feet of propagation, as this is in-line with the Planning Commission's practice of approving only up to 10% of the total cultivation area as additional propagation.

The cultivation site complies with all the requirements of the CCLUO, the Humboldt County Code and the Humboldt County General Plan and the county prepared an addendum to the environmental impact report (EIR) adopted for the CCLUO for the project which documents how the EIR for the CCLUO adequately address the potential impacts associated with this project.

Irrigation water is sourced from an onsite permitted well with an estimated yield of 20 gallons per minute. The well draws from 140 feet below the ground surface. Total estimated annual water use is 540,000 gallons (8.3 gal/SF). Registered Geologist David Lindberg evaluated the well and found it to be hydrologically disconnected from surface waters and shallow aquifers. Geologist Lindberg also found the wells on surrounding properties draw from shallower perched ground water formation. Use of a groundwater well does not require forbearance during the dry season under the CCLUO or under state regulations.

The project was heard by the Planning Commission on Oct. 21, 2021, where it was approved unanimously. In addition to the conditions of approval recommended by county staff, the Planning Commission imposed the following condition:

*The applicant shall develop an alternative water source (rainwater catchment or additional storage) to accommodate water needs for 50% of new cultivation. New cultivation shall include 9,800 SF of cultivation under the initial Special Permit and 30,200 SF of cultivation under the Special Permit for the Retirement, Relocation, and Remediation (RRR) program. Therefore, 50% of the water for 40,000 SF of outdoor cultivation shall come from an alternative water source. The applicant shall install monitoring/tracking devices onsite to show that 50% of the irrigation water is derived from an alternative water source. The applicant shall receive appropriate permits from the Humboldt County Department of Planning and Building and other relevant departments prior to construction of an alternative water source. Plans for the development of an alternative water source shall be submitted to the Department of Planning and Building within three (3) months of project approval.*

### Appeal

The appellant objects to the imposition of this condition of approval requiring additional water storage. 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 CCLUO (Ordinance 2.0) allows the use of ground water as a source of irrigation and that although no storage is required. The applicant states in their appeal that they are proposing 67,000 gallons of storage even though not required.

Staff Response:

This is correct. The CCLUO includes no language requiring water storage for non-diversionary sources. However, it is not outside of the authority of the Planning Commission to require water storage for projects that are utilizing groundwater wells. 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, overdraft of groundwater resources could be detrimental to the public welfare and/or injurious to properties or improvements in the vicinity. In this instance there is no evidence that indicates that the use of the groundwater well for the proposed Humboldt's Own LLC project will result in overdraft of groundwater resources and the imposition of a condition for additional water storage may be arbitrary.

In this case, the pump test associated with the well log indicates that it has an estimated yield of 20 gallons per minute which is sufficient for supplying all of the irrigation needs for the project. At 20 gallons per minute, the well would produce the entire annual irrigation needs of 540,000 gallons in less than 19 days if it were to be pumped continuously. The proposed cultivation season is July through October with an estimated irrigation amount of 135,000 gallons for each of the 4 months. While unlikely to be pumped continuously, this amount of water would equal approximately 3 gallons a minute if pumped continuously each day during the 4 months of operation. Thus, the drawdown pressure on the well is minimal compared to its maximum capacity of 20 gallons a minute.

Over-pumping of the well would have the potential to be detrimental to the well if the well had a connection to any surface water features or adjacent wells. A letter was submitted by David Lindberg, an Engineering Geologist, demonstrating that the subject well is unlikely to be hydrologically connected to a nearby wells, wetlands and surface waters in any manner that would affect adjacent waters or wells (Attachment A). Accordingly, there is no substantial impact to public welfare or detriment to properties or improvements in the vicinity that would justify the requirement to forbear 50% of the water needs for the new cultivation proposed by the project. Should the well become less productive, the county has the right by ordinance to reduce the extent of commercial cannabis activity on the property commensurate with available water (H.C.C. Section 314-55.4.5.10).

Staff recommends approval of the appeal with a replacement condition requiring well-metering with an annual determination of the groundwater surface elevation to determine if the groundwater surface is stable or declining. Should annual testing show that the water level is declining over a period of 3 years, the applicant shall develop supplemental sources of water sufficient to maintain the groundwater at a level of equilibrium.

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 approve the appeal with no condition to address the well and water source or the Board could deny the appeal and require the condition to provide an alternative water source or water storage required 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
2. Appeal filed by Humboldt's Own LLC
3. Planning Commission Staff Report
4. Resolution of the Planning Commission, Resolution No. 21-167 and Revised COA
5. Well Completion Log
6. Letter dated October 1, 2021, from Lindberg Geologic Consulting
7. Public Comments submitted to the Planning Commission

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A