

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

An Appeal of the Planning Commission’s Approval of a Conditional Use Permit for 24,634 Square Feet of Existing Commercial Cannabis Cultivation Consisting of 22,380 Square Feet of Outdoor and 2,254 Square Feet of Mixed Light Cultivation, the Appeal Relates Specifically to the Addition of Conditional of Approval A. 25 Requiring 20% Rainwater Catchment within 2 years as Well as Staff Recommended Condition of Approval A11 which Requires Capping of a Second Well

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 resolution (Resolution 22-__). (Attachment 1) which does the following:
 - a. Finds that the Board of Supervisors has considered the Addendum to the Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance that was prepared for the Dyerville Farms, LLC project); and
 - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Sustain the Appeal submitted by Dyerville Farms LLC; and
 - d. Approves the Conditional Use 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. (1100268-608420)

DISCUSSION:

Executive Summary

This is an appeal of the Humboldt County Planning Commission’s July 7, 2022, approval of the Dyerville Farms, LLC Conditional Use Permit by a 5-1 vote. Dyerville Farms, LLC (Appellant), is appealing the addition of condition of approval A25 which requires implementation of rainwater catchment for up to 20% of the total annual irrigation water use within 2 years. For this project, 20% of the total annual irrigation water use would require 62,720 gallons of irrigation water annually come from rainwater catchment. Appellant is requesting that condition of approval A25 be removed from the permit stating in their appeal the Planning Commission “For no reason added 20 percent

rain catchment to our project without any science behind their decision.” The appeal goes on to state that the added condition “...will cause harm to Dyerville Farms adding a burden of at least \$100,000.” The Appellant is also appealing staff recommended condition of approval A11 which requires capping another existing well on the property not used for cannabis irrigation.

The Planning and Building Department is recommending the Board of Supervisors sustain the appeal for both issues and approve the Conditional Use Permit as recommended and remove conditions of approval A25 and A11. Condition A25 should be removed because mitigation of the concerns raised by the Planning Commission were already addressed in the adoption of the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) mitigation and monitoring program. Additionally, the CMMLUO does not require applicants to use a particular water source or combination of water sources. Condition A11 should be removed because there is no nexus between the condition and the cannabis permit. Although the additional existing well has high levels of manganese making it unsuitable for irrigation, it is still possible to use the well for domestic purposes such as filling fire suppression tanks.

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.

Project Information

The project is a Conditional Use Permit (PLN-12424-CUP) for 24,634 square feet of existing commercial cannabis cultivation consisting of 22,380 square feet of outdoor and 2,254 square feet of mixed light cultivation. The project proposal includes a 2,830-square-foot ancillary propagation area with appurtenant drying and processing activities. The project is conditioned to limit ancillary nursery size to 10% of cultivation area. The project includes a Special Permit for work within the Streamside Management Area. The primary source of electrical power is a solar array with battery storage with a generator used for backup. Irrigation water is sourced from one groundwater well (Permit No. 19 /20-0813) that is hydrologically disconnected from surface water.

During the deliberations by the Planning Commission on July 7, 2022, some commissioners expressed concerns regarding drought and climate change. The commission accepted the analysis of the groundwater well conducted by a licensed professional geologist concluding there would be no impact on neighboring wells or surface waters. The commission also accepted the analysis by staff concluding that sufficient water and storage was currently available to serve the operation.

Appeal

The Appellant, Dyerville Farms, LLC, which is also the applicant, is requesting the removal of two conditions of approval, one added by the Planning Commission during the approval hearing and the other originally recommended by staff. Issue One is the request to remove Condition of Approval A25 from the permit. The Appellant states the Planning Commission “For no reason added 20 percent rain catchment to our project without any science behind their decision.” The appeal goes on to state that the added condition “...will cause harm to Dyerville Farms adding a burden of at least \$100,000.”

Issue Two is the request to remove Condition of Approval A11 to cap well WCR2018-01037. The Appellant states "...the second well is not contaminated. It has high manganese which is not good for farming but is good for fire suppression."

Staff Response Issue One

The concerns raised by the Planning Commission were already addressed in the adoption of the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) mitigation and monitoring program. Additionally, the CMMLUO does not require applicants to use a particular water source or combination of water sources.

The text of condition of approval A6 is:

"Within one year of project approval the applicant shall provide a plan for review and approval by the Planning and Building Department to implement a rainwater catchment system capable of providing 20% of the total water required for cultivation. Within two years of project approval the rainwater catchment system must be operational and provide at least 20% of the irrigation water."

To justify the condition of approval A6, the Commission made finding 6(f) in the adopted resolution:

"It is necessary to have a combination of water sources in light of the historic drought and climate change, so a condition has been added to require rainwater catchment for at least 20% of the irrigation water to protect public health safety and welfare."

The concerns described in finding 6(f) for the Conditional Use Permit were already addressed in the mitigation and monitoring program associated with the Mitigated Negative Declaration and the adoption of the Commercial Medical Marijuana Land Use Ordinance (CMMLUO). Specifically, resolution 16-14 adopted by the Board of Supervisors on Jan. 26, 2016, finding that the CMMLUO is consistent with the General Plan and adopting the mitigated negative declaration with substitute mitigation measures and a mitigation monitoring program includes the following provision:

"Reserved Right to Restrict Cultivation Activities – *All clearances and permits require that the recipient acknowledge the County's right to place limits on cultivation should unforeseen environmental conditions develop throughout a watershed (such as low surface water flows or sustained drought). This allows the county opportunity to conduct contemporaneous response to changing environmental conditions prompting widespread concern."*

The reserved right to restrict cultivation activities in response to contemporaneous environmental conditions is also codified in the CMMLUO in section 314-55.3.10(m):

"Acknowledge that the County reserves the right to reduce the size of the area allowed for cultivation under any clearance or permit issued in accordance with this Section in the event that environmental conditions, such as a sustained drought or low flows in the watershed will not support diversions for irrigation."

This programmatic mitigation measure is further implemented by all cannabis permit applicants signing an acknowledgement form as part of the application process. The acknowledgement form provides direct notice to applicants regarding this and other mitigation and monitoring measures.

The Planning Commission adopted the subject condition in response to the future possibility of an environmental condition rather than a contemporaneous environmental condition. As noted previously, the commission accepted the groundwater analysis by the licensed professional geologist and the staff analysis regarding availability of adequate water to serve the proposed operation. If there is a change in environmental conditions regarding water availability, the county can reduce the cultivation size of the operation accordingly.

The cannabis permitting program does provide various performance standards for water. For example, the CMMLUO requires forbearance and storage for surface water diversions and its successor, the Commercial Cannabis Land Use Ordinance (CCLUO) prohibits water diversions or new cultivation in impacted watersheds. However, the cannabis permitting program does not dictate that an operation uses a specific source or combination of sources for irrigation water.

While it may be prudent to have multiple water sources, adding such a condition without there being an identified need seems unsupported. There was no correlation between the requirement for 20% rainwater catchment and the production capacity or sustainability of the well. The fact is the well is very high producing (capable of 80 gallons per minute), and the property is very large (200 acres), so there is not significant pressure on this groundwater resource. The closest well is on the subject property and is not being used for cannabis cultivation. Absent the identification of specific contemporaneous environmental condition affecting this specific project in this location, the imposition of conditional of approval A25 by the Planning Commission may have been placed without the necessary evidence and findings.

Staff Response to Issue Two

During the project presentation to the Planning Commission, the consultant planner stated that the reason for condition A11 was to prevent the second well from being used for cannabis irrigation purposes. The second well is not proposed for cannabis irrigation and other conditions of approval require water meters and logs which will allow for monitoring and inspection. The well known as WCR2018-010387 is permitted (18/19-0285) and there is no nexus to the cannabis project to justify capping. The reported high manganese makes it unlikely the applicant would use this well for irrigation. As the Appellant points out in their appeal, this permitted well could still be used for other beneficial purposes on the property such as recharging fire suppression tanks and department staff agrees. Therefore, the imposition of condition of approval A11 is unnecessary.

FINANCIAL IMPACT:

The Appellant has paid the fee associated with filing this appeal (1100268-608420). There will be no additional impact on the General Fund.

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 deny the appeal and approve the project as revised by the Planning Commission on July 7, 2022. The Board could also choose to revise or add other conditions of approval. The Board could also choose to deny the Conditional Use Permit.

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-2022-17845
 - a. Exhibit 1 – Cultivation Operation Plan
 - b. Exhibit 2 – Site Plan
2. Grounds for Appeal filed by Dyerville Farms, LLC
3. Planning Commission Staff Report
4. Resolution of the Planning Commission, Resolution No. 22-082

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A