



COUNTY OF HUMBOLDT

For the meeting of: 4/6/2021

File #: 21-244

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Appeal of Planning Commission approval of a Special Permit to allow 18,000 square feet of new cannabis cultivation for the Rising Goat Limited

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. Considers the Addendum prepared for the Rising Goat project and finds the project consistent with the Environmental Impact Report certified for the CCLUO per section 15164 of CEQA Guidelines; and
 - b. Makes the findings required to deny the appeal and approve the Special Permit; and
 - c. Denies the Appeal; and
 - d. Approves the Special Permit subject to the conditions of approval (Attachment 1 to the Resolution); 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 Feb. 18, 2021 approval of the

Rising Goat Limited Special Permit application. The approval was to allow 18,000 square feet of outdoor cannabis cultivation in accordance with the county's Commercial Cannabis Land Use Ordinance (CCLUO, "Ord. 2.0"). All processing will take place off-site at a licensed processing facility. The applicant anticipates using approximately 249,600 gallons of water annually provided by a well which is of questionable hydrological connectivity to adjacent surface water. Concerns regarding this well form the primary basis of the appeal.

Sue Jacobson, on behalf of the Water Rights Holders of the Overland Subdivision (Appellant) has appealed the Planning Commission approval. The appellant submitted a letter through their attorney stating why they believe that the Planning Commission's approval does not comply with the State Water Resources Control Board Cannabis Cultivation Policy, dated Oct. 17, 2017 which requires ascertaining the project's aquatic base flow under the policy's Groundwater Requirements and is inconsistent with "the Humboldt County Code and other applicable laws" (see Attachment 2). The primary assertion is that the county should be requiring seasonal forbearance of the well due to the high surface water-groundwater connectivity.

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's decision).

Background and Planning Commission Action

On Jan. 24, 2020, Rising Goat Limited, applied for Special Permit for 18,000 square feet of outdoor cannabis cultivation with drying to occur onsite. Further processing such as trimming will take place offsite at a licensed processing facility. Power will be provided by solar with a backup generator and is only necessary to operate the water pump. Estimated annual water usage is 249,600 gallons for irrigation (approximately 13.86 gallons/sf). The applicant will utilize drip irrigation to conserve water and ensure there is minimal to no run-off. There will be 17,500 gallons of hard-sided storage tanks.

The project is located in the Garberville area, on the west side of Dyerville Loop Road, approximately 1,021 feet west from the intersection of Dyerville Loop Road and Ross Road, on the property known as 1400 Ross Road. Ross Road is a graveled privately maintained road, while Dyerville Loop Road is county-maintained.

The Planning Commission approved the Rising Goat project by a vote of 5-1, with Commissioner Peggy O'Neill the nay vote.

Setting, Access, and Neighboring Land Uses

There is one Class II and one Class III watercourse on the subject parcel. The Class II watercourse is a tributary to Dean Creek then the South Fork Eel River. The Class III watercourse is ephemeral and did

not have water present in the channel in July 2020. All cultivation sites are located outside the Streamside Managements (SMAs). The subject parcel is a mix of forested and grassland habitat. A review of aerial imagery on the Humboldt County WebGIS shows an existing grassland opening was expanded for cannabis cultivation between 2005 to 2009 and again between 2010 - 2012. A second clearing along the central portion of the southern parcel boundary was converted between 2012 to 2014. The applicant submitted a Timber Conversion Evaluation Report prepared by NRM Corp., Inc., dated Nov. 30, 2020. The report found that approximately 1.85 acres of timber conversion occurred in two distinct areas with an additional small amount of white oak species cleared by an adjacent property owner that may have occurred on the property. The property is 19.98 acres in size and has been managed in the past for cannabis cultivation.

This property was the subject of an application for pre-existing cannabis cultivation under the CMMLUO (Ordinance 1.0) however the property changed ownership and the new owners were unable to secure a transfer of the application. By the time the new owners submitted an application under the CCLUO (Ordinance 2.0) the application window for pre-existing had closed and therefore this application must be considered under the requirements for new cultivation under the CCLUO. The project as proposed and conditioned, is consistent with the requirements for new cultivation under the CCLUO.

Neighborhood Concerns

Concern has been raised by members of the public regarding the permitted well having potential to be hydrologically connected to their own downstream water supply. It is important to note that cannabis has traditionally been cultivated on this site using a surface water diversion as the water source. Under 2.0 a permit cannot be approved using a surface water diversion. The well was drilled to support cannabis going forward.

The CCLUO allows for the use of a well for cannabis irrigation if the well can be determined to not be hydrologically connected to any surface waters. The subject well was installed in 2016 to a depth of 200 feet. It has three screening intervals including one between 40 and 75 feet which is above a layer of blue clay. It is this screening interval that may have some connection to the adjacent springs or surface waters due to the presence of the blue clay layer which is likely forming an impermeable barrier between the ground and surface waters above the clay layer and the groundwater below the clay layer. Some of the adjacent springs are at the same or similar approximate elevation of this upper screen. Attachment 8 shows the approximate location of the springs and the existing well.

The Planning Commission was concerned about the potential for the well to adversely affect the water supply of adjacent land owners and added a condition of approval prohibit cannabis cultivation on the parcel until the well can be demonstrated to not be hydrologically connected to any surface waters or an alternative water source must be found. The Commission added the following condition:

Prior to operation of any cannabis activity the applicant shall complete one of the following:

- a) *Present a report from a qualified hydrogeologist that has been selected and approved by*

Humboldt County that determines the well and its current screening intervals are not connected to any surface water features, including local springs; or

- b) Cap the existing well and dig a new well which has been demonstrated by a qualified hydrogeologist that has been selected and approved by Humboldt County to not be hydrologically connected to any surface water; or*
- c) Receive approval from the Planning Commission of a modification to the permit to require rainwater collection as the source of water.*

The neighboring property owners have also raised concerns regarding noise pollution from a fuel-based generator. The power source for the project is solar with a backup generator that will only be used in case of emergencies and is only used to run the water pump. The proposed energy use is consistent with Section 55.4.12.5.2 of the CCLUO.

Appeal

The basis of the appeal is set forth in the appeal letter submitted by Stokes, Hamer, Kirk & EADS, LLP on behalf of the Water Rights Holders of the Overland Subdivision, received by the Planning and Building Department on March 4, 2021 (Attachment 2). Consistent with Board of Supervisors' practice to seek solutions, the Planning Department reached out to the appellant to determine if a resolution to the issues could be reached that might remove the need for the appeal. The appellant indicated a willingness to do so, and expressed their primary concern was protecting their water source. The applicant indicated an unwillingness to engage with the appellant in discussions. Further, the applicant has sent a significant number of email and letter correspondence to the appellant's attorney and to the county that can be described as hostile and threatening. These correspondences are included in Attachment 10. Consideration is needed for discretionary projects where talent, resources and/or understanding are required to successfully carry out a project without harming the public health, safety, and welfare.

It is apparent based on the correspondence in Attachment 10 that the applicant is not understanding the level and importance of the concern related to water. This is magnified by two emails dated March 30, 2021 where he threatens to start growing legumes and berries on the property. The email goes on to shift the burden of paying for improvements associated with the cannabis activity to the existing property owners who do not cultivate cannabis. The email then blames the Planning Department for endless "peccadilloes" during the application process. In situations where an applicant cannot demonstrate the ability to take responsibility for their obligations and carry out conditions or approval, a permit should be denied. The responses to this appeal raise concern about the ability of this permit to be carried out in such a manner as to protect the public health, safety, and welfare.

The following discussion addresses issues raised by Water Rights Holders of the Overland Subdivision in the appeal:

Appeal Issue 1: The Appellant Asserts the Project is Inconsistent with the State Water Resources Control Boards Cannabis Cultivation Policy, Dated October 17, 2017.

The appellant states that “the project’s aquatic baseflow is required under the Cannabis Cultivation Policy’s Groundwater Requirements.”

The appellant argues that “seasonal forbearance is required in watersheds in which there is high surface water-groundwater connectivity or close proximity to streams.”

The appellant requests that “mandatory forbearance of draws from the well from May 15 to Oct. 31 of each year in order to protect the water supply, and to reduce the size of the area allowed for cultivation to address drought and low flow conditions which will be aggravated by diversions for irrigation as reserved by the County of Humboldt in Section 28 of the Revised Recommended Conditions of Approval.”

Staff Response: The project as conditioned precludes cultivation of cannabis until the permitted well can be determined not to be hydrologically connected to any surface waters. Recommended condition of approval number 4 would require the following:

Prior to operation of any cannabis activity the applicant shall complete one of the following:

- a) Present a report from a qualified hydrogeologist that has been selected and approved by Humboldt County that determines the well and its current screening intervals are not connected to any surface water features, including local springs; or*
- b) Cap the existing well and dig a new well which has been demonstrated by a qualified hydrogeologist that has been selected and approved by Humboldt County to not be hydrologically connected to any surface water; or*
- c) Receive approval from the Planning Commission of a modification to the permit to require rainwater collection as the source of water.*

This condition was written to ensure the water source was not connected to surface water including local springs which was to ensure compliance with the CCLUO and protect the water source of the adjacent properties. Normally it is better to have this information understood prior to taking an action. The neighbors brought up concerns about water at the hearing and the Planning Commission appropriately addressed the concern. The Commission placed the responsibility of choosing the hydrogeologist with the Planning and Building Department to ensure that the review and findings would be unbiased. It is a real possibility that a hydrogeologist will not be able to definitively say that the well is not connected to surface water or local springs. In this case the applicant will need to work collaboratively with county staff to find an alternative water source. The applicant’s correspondence cannot be described as collaborative. The Planning Commission imposed a very appropriate and precise condition to address the water concern. Based upon existing correspondence the applicant may not have the capacity to effectively comply with this condition.

Appeal Issue 2: The Appellant Asserts the Project is Inconsistent with Humboldt County Regulations Related to Energy Use

The appellant states that the project is inconsistent with the Commercial Cannabis Land Use Ordinance (CCLUO, "Ordinance 2"), requiring that electricity for the project must be exclusively provided by a Renewable Energy Source, meeting the Performance Standard for Energy Use.

The appellants are concerned about noise pollution from frequent use of a fuel-based generator and the potential for mishandling of diesel fuel and oil impacting their water supply and other environmental interest"

Staff Response: During Planning Commission hearings concern was raised regarding the energy source for the project. Section 55.4.12.5 of the CCLUO states:

"All electricity sources utilized by Commercial Cannabis Cultivation, Manufacturing, or Processing activities shall conform to one or more of the following standards:

- a) 55.4.12.5.1 grid power supplied from 100% renewable source;*
- b) 55.4.12.5.2 on-site renewable energy system with twenty percent net non-renewable energy use;*
- c) 55.4.12.5.3 grid power supplied by partial or wholly non-renewable source with purchase of carbon offset credits."*

The subject project conforms with section 55.4.12.5.2 of the CCLUO. The proposed power source for the project is solar with a backup generator that will be used to pump water from the well. The generator will supply no more than 20% of the energy used for cannabis activities. The generator will be housed in a generator shed and kept in secondary containment. Under both the ordinance requirements and the applied conditions of approval noise from the generator may not exceed more than 3 decibels from the existing ambient noise levels on the property.

CONCLUSION

The project site is planned and zoned appropriately for the proposed activity. Many members of the public as well as the appellant have objected to the proposed project and have expressed the opinion that the permitted well is likely to be connected to their water supply. The project has been conditioned to ensure the well not be used for cannabis irrigation until it is demonstrated the well is not hydrologically connected to the appellants water supply. The County will choose the hydrogeologist who will perform the analysis of the well which ensures that the analysis is completed by an impartial expert. Since there is reason to be concerned that this well could adversely affect surface water and the water source of adjacent properties it is important to consider whether the applicant possesses the necessary capacity to carry the project out and protect the public health, safety and welfare. One option would be to require that the hydrogeologic analysis be completed before taking action on the appeal. Had the applicant been willing to work with staff and have this completed, the appeal may

have been avoided. A second option would be to conclude that the applicant will not be able to demonstrate water use from this site will not have an adverse impact and approve the appeal and deny the permit.

The appellant also raises concerns regarding the noise pollution that will be caused by a fuel-based generator and the potential for mishandling fuel. Power is only needed for the water pump and will be provided by solar with a backup generator that will only be utilized in the event of an emergency. The generator will be housed within a generator shed and kept in secondary containment. The proposed energy use is consistent with Section 55.4.12.5.2 of the CCLUO. The proposed Project is consistent with the Humboldt County Zoning Ordinance and General Plan.

FINANCIAL IMPACT:

There will be no additional effect on the General Fund. The appellant has paid the appeal fee.

STRATEGIC FRAMEWORK:

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

OTHER AGENCY INVOLVEMENT:

Department of Public Works, Land Use Division, CalFire.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may consider the following alternatives:

1. Uphold the appeal, overturn the Planning Commission approval. The Board may decide that the project in its present form and managed by the applicant Rising Goat Limited, would 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 Rising Goat Limited project because the findings for approval under Section 312-17.1 of the Humboldt County Code cannot be made.
2. 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. Given the concerns raised regarding the existing well it may be appropriate to revise the condition of approval regarding the well to require the capping of the existing well and installation of a new well to be installed under the guidance of a hydrogeologist to ensure no connection to the adjacent spring or other surface water features.

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 to deny the appeal and approve the permit
 - 1a. Draft Board Resolution and Findings to approve appeal and deny the permit
2. Appeal filed by Water Rights Holders of the Overland Subdivision, dated March 4, 2021.

3. Resolution of the Planning Commission
4. Planning Commission Staff Report including CEQA Addendum
5. Project Site Plans
6. Operations Plan
7. Existing well log
8. Map showing the location of the existing well and the springs serving the Overland Subdivision
9. Public Comments
10. Correspondence between the applicant, appellant, and county.
- 10a. Additional correspondence between the applicant, appellant, and county.
- 10b. Additional correspondence between the applicant, appellant, and county.

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A