

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings; Meeting on August 25, 2020

Resolution No. ____ - ____ Resolution of the Board of Supervisors of the County of Humboldt DETERMINING THE PROJECT IS STATUTORILY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING FINDINGS OF FACT, DENYING THE APPEAL FOR RECORD NO. PLN-2019-16376 AND DENYING THE ROCCI COSTA CONDITIONAL USE PERMIT, RECORD NO. PLN-12176-CUP

WHEREAS, Rocci Costa applied for a Zoning Clearance Certificate for 10,000 square feet of new commercial cannabis cultivation under the County's Commercial Medical Marijuana Land Use (CMMLUO) Ordinance on December 21, 2016; and

WHEREAS, Section 314-55.4.6.7 of the County's Commercial Cannabis Land Use Ordinance (CCLUO) adopted on May 8, 2018 retroactively requires all Zoning Clearance Certificate applications submitted prior to January 1, 2017 in specified Community Planning Areas to comply with specific provisions intended to ensure compatibility with surrounding uses and control of potential nuisance; and

WHEREAS, to comply with Section 314-55.4.6.7 of the CCLUO, Rocci Costa applied for a Conditional Use Permit to allow for open-air cultivation within 600 feet of a residence on a separately owned parcel; and

WHEREAS, the Planning and Building Department reviewed the submitted application and supporting evidence and referred the application and evidence to applicable reviewing agencies for site inspections, comments and recommendations; and

WHEREAS, on March 5, 2020 the Planning Commission:

1. Found the Conditional Use Permit application statutorily exempt from CEQA pursuant to Sections 15270 of the CEQA Guidelines (Projects which are disapproved); and
2. Found the impacts of unenclosed cannabis cultivation on the Warren Creek neighborhood will be detrimental to the public health, safety, and welfare; and
3. Found the findings supporting approval of the permit specified in Section 312-17.1 of the Humboldt County Code could not be made affirmatively; and
4. Denied the Conditional Use Permit Application No. PLN-12176.

WHEREAS, Rocci Costa, Rocci Costa ("Appellant") on March 19, 2020, filed an appeal in accordance with the Appeal Procedures specified in Humboldt County Code Section 312-13 et seq.; and

WHEREAS, the Board of Supervisors held a duly-noticed public hearing, *de-novo*, on August 25, 2020, and reviewed, considered, and discussed the application and appeal for the Conditional Use Permit; and reviewed and considered all public testimony and evidence presented at the hearing.

Now, THEREFORE BE IT RESOLVED, that the Board of Supervisors makes all the following findings:

- 1. FINDING:** **CEQA.** The Conditional Use Permit is a discretionary project and therefore potentially subject to the California Environmental Quality Act ("CEQA") but it has been determined that the project is statutorily exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines (projects which are disapproved).

EVIDENCE: a) CEQA Guidelines Section 15270 states that CEQA does not apply to projects which a public agency rejects or disapproves.

- 2. FINDING** The proposed cannabis cultivation site would obtain access from Warren Creek Road which is a narrow residential road not suitable to providing access to a 10,000 square foot cannabis cultivation site and as a result the proposed development and conditions under which it would be operated and maintained will be detrimental to the public health, safety, or welfare and materially injurious to properties and improvements in the vicinity.

EVIDENCE a) Warren Creek Road does not meet a Category 4 road standard and thus required preparation of a Road Evaluation report to determine the suitability of the Road to support the cannabis cultivation activity. A road report was prepared by Robin Collis of Green Road Consulting on January 10, 2020.

b) The road evaluation identified a portion of the road as a very low volume road as narrow as 12 feet wide with fences on both sides of the road. The road report also identified that even in areas where the road was wider there were pinch points.

c) The road evaluation recommended many improvements being necessary for approval of the proposed project. The improvements include installation of turnouts, removal of vegetation for sight distance, and installation of gravel for turnouts and widening. In addition, the recommend installation of signage to advise that the road narrows, one lane road ahead, and of an upcoming blind corner. Installation of one or more of the recommended turnouts would result in the need to relocate existing fencing.

- d) The road evaluation report states: “Maintenance and upkeep of the first half of Warren Creek Road is carried out by Humboldt County Department of Public Works. This section is paved and generally wide enough for two-way traffic. Two notable pinch points are present in this section of the road that would not be permanently addressed without major earthworks. It is recommended that a turnout be rocked near one of these points (Turnout #9) while the other (near the junction with West End Road) has been reviewed in the past by Humboldt Planning and Building and the only conceivable permanent solution would require removal of two historic barn structures as well as significant monetary contributions of the neighborhood and or Humboldt County. Therefore, it is recommended that the cannabis applications not be hindered by the condition of Warren Creek Road if the recommended rocking of turnouts and implementation of the Traffic Management Plan are carried out, and as deemed sufficient by the Planning Commission.”
- e) The proposed cannabis site is at the very end of Warren Creek Road.

3. FINDING

The proposed cannabis cultivation site is in the Blue Lake Community Plan area and is not compatible with the community and would create a nuisance to the community.

EVIDENCE

- a) Potential cannabis odor from the unenclosed cannabis cultivation would impact adjacent residences.
- b) Warren Creek Road is a low volume narrow road serving a predominantly residential area. Putting commercial cannabis cultivation related traffic on this road in the form of employees, delivery and transportation of product on this road will change the character of the residential area.
- c) The County has found that outdoor cannabis cultivation can be inconsistent with predominantly residential areas and regulates outdoor cultivation more strictly. In this case the applicant has not been able to address the concerns of the community, or adequately convince the Board of Supervisors that this can be operated in a manner compatible with the community.

FINDINGS FOR APPEAL

4. FINDING

The action by the Planning Commission to deny the Conditional Use Permit is in accord with the standards and regulations of the Commercial Medical Marijuana Land Use Ordinance and the

Commercial Cannabis Land Use Ordinance of the Humboldt County Code.

- EVIDENCE**
- a) The application was initially filed under the CMMLUO as a Zoning Clearance Certificate, but under the CCLUO the location in the Community Plan Area requires one of three things:
 - 1. Locate the cultivation activities more than 600 feet from any residential boundary, or
 - 2. Enclose the Cultivation, or
 - 3. Obtain approval of a Conditional Use Permit.

The applicant chose to pursue a Conditional Use Permit.

- b) Section 55.4.6.7 of the CCLUO states the intent of the section to require retroactive permitting for Ministerial permits in community plan areas are “designed to ensure compatibility with surrounding land uses and control of potential nuisance.” The Conditional Use Permit cannot be approved if the cultivation site is not found to be compatible with the community or if it would be detrimental to the public health, safety and welfare.
- c) The Planning Commission found that cannabis cultivation could not be operated at this location without adversely impacting the community.

5. FINDING

The Planning Commission at its hearing of March 5, 2020 did not commit an error or an abuse of discretion in denying the application for a Conditional Use Permit. The appellant’s arguments about how the public presented information and has taken into consideration comments made by individual Planning Commissioners and finds that their action to deny the CUP was not an error or an abuse of discretion.

- EVIDENCE**
- a) The purpose of a public hearing is to consider testimony from the public and from the applicant. The role of the Planning Commission is to weigh the information presented and determine whether a project can be undertaken in a manner compatible with the community and in a manner that protects the public health, safety and welfare.
 - b) The Planning Commission found based on the evidence provided that the cannabis cultivation site at this location could not be operated in a manner that was compatible with the community or would not be determinantal to the public health, safety and welfare.

NOW, THEREFORE, be it resolved that the Board of Supervisors hereby:

- 1 Adopts the findings and evidence contained herein; and
- 2 Finds the project exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines and directs the Planning Department to file and process a Notice of Exemption in accordance with the CEQA Guidelines; and
- 3 Denies the Appeal submitted by Rocci Costa, Rodney Costa, and identified as Record Number PLN-16376; and
- 4 Denies the requested Conditional Use Permit for Record Number PLN-12176-CUP.

The foregoing Resolution is hereby passed and adopted by the Board of Supervisors on August 25, 2020, by the following vote:

Adopted on motion by Supervisor _____, seconded by Supervisor _____ and the following vote:

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

Chair

_____,
Humboldt County Board of Supervisors

STATE OF CALIFORNIA)) SS. County of Humboldt

I, Kathy Hayes, Clerk of the Board of Supervisors of the County of Humboldt, State of California do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-titled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Board of Supervisors.

KATHY HAYES Clerk of the Board of Supervisors of the County of Humboldt, State of California

By: KATHY HAYES

Date: _____, 2019

By _____ Deputy