



COUNTY OF HUMBOLDT

For the meeting of: 6/13/2022

File #: 22-732

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Two separate appeals of the Planning Commission's approval of a Special Permit to allow 24,300 square feet of new mixed-light commercial cannabis cultivation.

Appeal 1: LaDonna Haga, Gary Haga, & Maureen Catalina ("opposing appellant") appeal the Planning Commission approval of Nava Ranch, LLC Special Permit PLN-2021-17162 for 24,300 square feet of mixed light commercial cannabis and 2,500 square feet of commercial indoor cannabis cultivation.

Appeal 2: Nava Ranch, LLC ("proposing appellant") appeal of the Planning Commission's approval of PLN-2021-17162 reducing the project's mixed light square footage from 43,560 square feet to 24,300 square feet.

RECOMMENDATION:

That the Board of Supervisors:

- a. Open the public hearing and receive the staff report, testimony by the opposing appellant, testimony from the proposing appellant, and testimony from the public; and
- b. Close the public hearing; and
- c. Adopt the resolution (Resolution 22-__). (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 prepared for the Nava Ranch, LLC project); and
 - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Denies the Opposing Appeal submitted by LaDonna Haga, Gary Haga, & Maureen Catalina; and
 - d. Approves the proposing Appeal submitted by Nava Ranch, LLC; and
 - e. Approves the Special Permit for 43,560 square feet of mixed light cultivation and 2,500

square feet of indoor cultivation subject to the recommended conditions of approval.

- d. Direct the Clerk of the Board to give notice of the decision to the opposing appellant, the proposing appellant, the Planning and Building Department, and any other interested party.

SOURCE OF FUNDING:

The opposing Appellant has paid the fee associated with filing this appeal.

DISCUSSION:

Executive Summary

This item consists of two appeals of the Humboldt County Planning Commission's approval of the Nava Ranch, LLC Special Permit. The opposing appellant is appealing project approval, citing inadequate responses and insufficient data to address neighbor concerns regarding noise pollution, light pollution, employee count, energy availability, water availability, road conditions, proximity to public lands, & public access impacts, also citing lack of an opportunity given to the Bureau of Land Management for consenting to a setback reduction from Kings Range Wilderness, and confusion regarding what was approved and where the reduced development would be located. As conditioned and subject to the requirements of the CCLUO, the issues are addressed. The Planning and Building Department does not support this appeal.

Additionally, Nava Ranch, LLC is appealing the decision to reduce the proposed mixed light square footage from 43,560 square feet to 24,300 square feet, citing that the modification during the hearing was unnecessary to attain either code compliance or conformity with neighboring land use practices. There is merit to the concern that the reduction in cultivation area does not address the concerns raised. The Planning and Building Department supports this appeal.

Project Information

In April 2021, Nava Ranch LLC submitted a Special Permit application under the Commercial Cannabis Land Use Ordinance (CCLUO) to expand commercial cannabis cultivation on APN 107-106-006 to one acre of mixed light cultivation and 2,500 square feet of indoor cultivation. The site has an existing cannabis permit (PLN-12657-SP), allowing 6,600 square feet of mixed light cultivation, 2,700 square feet of outdoor cultivation, and 2,500 square feet of indoor cultivation. Under the pending permit, the outdoor cultivation would be converted to mixed light and the total mixed light cultivation area would be expanded to one acre. This represents a total increase of 34,260 SF of mixed light cultivation area. The applicant hopes to achieve up to three (3) harvests annually.

All water will be sourced from rainwater catchment in an existing pond, a proposed pond, and an existing rooftop rainwater catchment system. The estimated water needed annually for irrigation is approximately 550,000 gallons (11.9 gal/sq.ft./yr). The ponds will total approximately 1,050,000 gallons of storage, and twelve (12) 5,000-gallon tanks are proposed, for a total of 1,110,000 gallons of water storage. There is also one separate 5,000-gallon tank designated for fire suppression.

Drying, trimming, and processing will occur onsite in the existing 900 SF storing, processing, and packaging building. Operations will utilize one (1) full-time employee, up to three (3) additional seasonal employees, and up to four (4) family members, totaling eight (8) laborers. There is a portable restroom facility on site for employees, and a cannabis support building is proposed with an additional septic system. Power is sourced from PG&E via a green energy program and there is an existing solar array onsite featuring six (6) panels with outputs of 235 watts each. There is a 25-kilowatt (kW) Whisperwatt generator kept onsite for emergency use only.

The application was heard before the Planning Commission on May 5th, 2022. The commission received testimony that the site under the existing permit had not been operated in compliance with the existing conditions including not covering greenhouses at night, water theft, and generator use. There was also concern that the project was within 600 feet of Bureau of Land Management property, and the road accessing BLM property is very close to the proposed cultivation site. The initial motion to approve the project with an added condition to expire the existing permit upon exercising the new permit and to clarify the source of electricity failed with a vote of 3-3 (YES: McCavour, Levy, Mulder; NO: Mitchell, Bongio, Newman). After some discussion, a second motion was made to approve the project subject to limiting the additional cultivation area to not more than 15,000 square feet for a total cultivation area of 24,300 square feet of Mixed Light. This passed by a majority vote of 4-2 (YES: McCavour, Levy, Newman, Mulder; NO: Mitchell, Bongio). No findings were articulated explaining how the reduction in square footage addressed the concerns associated with the application.

Appeal #1

Prior to the hearing the opposing Appellants, LaDonna Haga, Gary Haga, & Maureen Catalina, submitted public comments in opposition to the project, and spoke in opposition to the project during the public hearings. The objections included concerns regarding noise pollution, light pollution, employee count, energy availability, water availability, road conditions, proximity to public lands, public access impacts, among other comments enumerated in previous letters. The opposing Appellant states that these evidence-based concerns were not adequately addressed in the approval of the Special Permit. The opposing Appellant also states that despite requests from the Bureau of Land Management, the County did not provide the Bureau with an opportunity to consent to the reduced setback from public lands. The opposing Appellant additionally argues that the Conditions of Approval for the project are unclear regarding what was approved.

Appeal #2

The Planning Commission's approval included the reduction of the project's proposed square footage to 24,300 square feet. The proposing Appellant objects to this reduction, stating that modifying the project during the hearing was unnecessary to attain either code compliance or conformity with accepted land use practices, calling the reduction arbitrary. The proposing Appellant also argues that the Decision Packet contains conflicting information regarding what was approved at the hearing and that, despite discussing this issue with staff, an updated Decision Packet has not yet been provided.

Staff Response

Appeal # 1

In response to public comments made prior to and during the Planning Commission hearing on March 17th, 2022, claiming that the current operation is out of compliance and operating as a public nuisance, the hearing was continued to April 21st, 2022 so that the assigned planner and supervising planner could more fully investigate the allegations and conduct a site visit. Many of these comments came from the opposing Appellants, who are neighboring property owners. The site visit occurred on March 28th, 2022; at which time the allegations could not be verified. Each of the allegations and staff response are addressed below:

- 1. *County took too long to inspect the site.*** One of the opposing Appellant's concerns is it took staff 11 days to inspect the site after the complaints were registered. The concern being that any violations could have been corrected in that amount of time. It is claimed, the applicant came and went to the site 20 times during this period, suggesting that they were cleaning up the site. It did take a substantial amount of time to schedule a site visit at a time when both the applicant and agent could be present. When staff was on the site, it was in compliance with the permit. It may be that the applicant cleaned up the site during this period and could point to a pattern of not conforming to the ordinance, but there is not empirical evidence of this.
- 2. *No evidence of sufficient power.*** The applicant's operation plan is not entirely clear that the use of lighting will be tier 1 mixed-light operation under the state definition, which is no more than 6 watts per square foot. The applicant utilizes only small fluorescent lights for their mixed-light operation which do not draw much power. Due to the lack of clarity in the applicant's operation plan, a condition of approval has been added to require wattage not to exceed 6 watts per square foot (COA B.2). The condition was modified by the Planning Commission do specify that the use of a generator is not allowed.

The applicant believes the existing 100-amp residential service is sufficient for the needs of the project. The opposing appellant also argues that renewable energy programs do not exist, appearing to interpret them as carbon credits, however Redwood Coast Energy Authority (RCEA) and Pacific Gas & Electric (PG&E) partnered to create the Repower+ program, which provides 100% renewable energy to those who opt-in at a slightly higher rate.

The opposing appellant also argues that the lack of energy calculations estimating the potential energy use of the project is grounds for denial. The Planning Commission added a condition to address this by requiring that the applicant provide documentation that there is sufficient power on the site prior to initiating the expanded cultivation (COA A6.) The project as approved by the Planning Commission does address and require there be sufficient power for the mixed light cultivation as proposed.

- 3. *Applicants run a loud generator all day and night and this is audible from adjacent residences. Lights are consistently uncovered and running all night and visible from adjacent residences.*** Prior to the public notice for this project the County Planning and Building Department had never received a complaint about light or noise about this site. This site is clearly visible from Wilder Ridge Road, and Smith-Etter Road runs immediately adjacent to the

existing operation. Both of these roadways are relatively heavily traveled and the County has not received light or noise complaints against this site. During the public hearing on May 5th, 2022, one of the opposing appellants claims to have complained regarding the site, but when questioned further, stated that the Planning Department is not one of the entities they had complained to. A site visit conducted by county staff shortly after these allegations were submitted found no fans or lighting in any of the currently operating greenhouses. Light shielding tarps were in place and fully functional. Low wattage fluorescent lights were stored in the on-site residential garage along with a small 2200-watt Honda generator. Per discussion with the applicant these lights are used early in the cultivation run and then removed.

While on-site County staff measured the noise from the generator at full load. Noise levels at full load were measured with a properly calibrated noise meter at 75 dbA at a distance of 5 feet, 50 dbA at a distance of 100 feet, and 35 dbA at a distance of 200 feet, at which point the generator is no longer audible. The generator was also not audible at the nearest public road, Smith-Etter Road. All property lines and residences are further away from where the measurements were taken. County staff did visually identify a 25-kw generator located on the property not in proximity to the cultivation. Per the applicant this was left on the property from the previous landowner and is not functional. Photographs submitted by the agent corroborate this. The opposing appellant provided photographs appearing to show lit greenhouses, but the photos did not provide adequate location-determinant context. Testimony from the applicant during the hearing on May 5th, 2022 indicated that there were no lights in the greenhouses at this time because the plants were flowering. The plants seen during the site visit on March 28th, 2022 did appear to be just starting their flowering phase.

4. ***Employee count is under-reported.*** While on-site there were a total of four employees/operators on the property and less than 10,000 square feet of cannabis was actively in cultivation. This employee count does appear low compared to similar sized operations however the applicant insists that this can be accomplished. The number of employees is a factor that is used to determine permit compliance. Too many employees may not be grounds for revocation of the permit but could be an indicator of other concerns.
5. ***Low water use.*** The amount of water use proposed in the operations plan is consistent with other applications at 11.9 gallons per square foot of cultivation area. This includes the perception that mixed light and indoor intuitively should require more water use due to more crops in a given year. The reality is that plants are typically smaller and require less water. A review of approved applications will show that location, type of plants, and cultivation methods can account for wide disparities in irrigation needs. In addition, the proposed 750,000-gallon rainwater catchment pond will be sufficient to account for any overage in their irrigation needs.
6. ***General site cleanliness.*** Staff found the site to be in good condition with no substantial visible trash or waste.
7. ***No State Water Board Enrollment and concern about erosion and sedimentation running into Honeydew Creek.*** The applicant is currently enrolled with the Water Board

(WDID#1_12CC403232) with no listed violations.

8. **Public access impacts** Public concerns regarding public access the Bureau of Land Management road appear to be based on the belief that the gate to the private driveway on the site blocks public access. This driveway is not a public access point and the Bureau of Land Management confirmed this in an email on May 4th, 2022. The public access to Smith-Etter Road itself is closed seasonally by BLM and will not be blocked or moved as a result of this project.
9. **Road Evaluation not sufficient.** County staff found that the road was in good condition and capable of supporting the low traffic associated with both this project and the adjacent approved cannabis site. While not a Category 4 roadway, Landergen Road is a County-maintained Road which only serves this site and one other.
10. **No Noise Study.** While it is true that no noise study had been prepared prior to the hearing on March 17th, 2022, a noise study was prepared before the hearing on May 5th, 2022. This noise study determined that ambient noise levels average between 35 and 37 decibels and the project is conditioned not to go over three decibels above that noise level for the life of the project. However, this Noise Study was taken during intermittent stormy and windy weather due to the time constraint, so the project is also conditioned to prepare an additional noise study during better conditions to help establish a more typical baseline.
11. **Lack of participation in community efforts.** The opposing appellant claims that the applicant has not attempted to join or assist with community efforts such as the Neighborhood Emergency Services Teams (NEST) coalition, including a member list without their name on it. While this may be true, it does not specifically relate to any of the required findings for approval of the project.
12. **Coordination with the Bureau of Land Management.** Due to the proximity of the project to Kings Range National Conservation Area, the project was referred to the Bureau of Land Management (BLM) on April 26th, 2021. On April 1st, 2022, BLM corresponded with the County stating that a comment letter was being prepared and would be completed before the end of the following week. For the previous project, PLN-12657-SP, the application was referred to BLM on August 28th, 2018 and comment was received on September 12th, 2018. This comment requested that the parcel be surveyed by a licensed professional land surveyor to ensure that trespass onto public lands does not occur. A field boundary survey was performed on September 7th, 2018 by Wallace E. Wright, a licensed land surveyor, and the plot plan resulting from that survey indicated that the house onsite was 192 feet from the property line and that the driveway connecting Landergen Road and Smith-Etter Road is located entirely on the subject parcel, (107-106-006.)

On April 12th, 2022, BLM submitted a comment letter raising significant concerns over this project and the requested setback reduction. While not specifically requesting denial of the setback reduction, BLM raises concerns and objections about the proposed project and its

requested setback reduction. Below is a synopsis of the BLM concerns and a staff analysis:

- Comment: BLM stated that since Smith-Etter Road provides vehicular access to public campground, trails and recreational areas this roadway should similarly be considered a recreational area under the code for which no setback reduction should be granted.

Response: BLM and other federal agencies own and maintain many public roads throughout Humboldt County and these roadways have never been considered a recreational area for the purposes of compliance with the CCLUO requiring a 600-foot setback from publicly owned property. Of note is that Smith-Etter Road in this location is an easement with the underlying land owned by the applicant. BLM suggests that a road easement across the applicant's property be treated as public open space. The 600-foot setback from publicly owned property was to ensure that public resource values are maintained, the roads leading to public lands have never been considered part of the resource value to be protected.

- Comment: BLM stated that the applicant does not have a right of way over the portion of Landerger Road that comes off of Wilder Ridge Road since this portion is on underlying BLM property.

Response: This road is a county-maintained road with a County-easement for such use.

- Comment: BLM raised questions about the source of water that is a point of diversion.

Response: This appears to be a misunderstanding as the existing water source is a pond fed from rainwater catchment and an additional 750,000-gallon rainwater catchment pond is proposed. The registered POD is not being utilized for the cannabis operation.

- Comment: BLM raised concern over impacts to Coho and Chinook salmon, and steelhead in Bear Trap Creek and Honeydew Creek which are near the site. These are tributaries to the Mattole River which are sediment impaired under the Clean Water Act. The proximity of this project has the potential to deliver nutrients and other pollutants to both Bear Trap and Honeydew Creeks.

Response: Bear Trap Creek is over 600 feet away from the project and Honeydew Creek is over 1,300 feet away and on the other side of two public roads from the project. All cannabis farms are regulated by the Regional Water Quality Control Board and are subject to strict requirements to preclude sediment and other pollutants from being released into surface waters.

- Comment: BLM raised concern over the proximity of this site to a Northern Spotted Owl (NSO) critical habitat.

Response: The nearest NSO activity center is over 2 miles away, which is far beyond the distance discussed in the EIR for the CCLUO as a potential impact to NSO from operation of cannabis facilities, and the Biological Study determined that, although there is moderate suitable habitat for NSOs surrounding the area, if recommendations are followed, then all potential direct or indirect impacts to the species can be mitigated.

Planning staff discussed these comments with BLM in a phone call and asked them to attend the Planning Commission hearing however they stated that they did not wish to attend because they did not wish to get involved in the permitting decisions that the County makes. This was the opportunity for BLM to consent or deny consent to the setback reduction. The BLM property for which the setback reduction is requested is an in-holding that is surrounded on all sides by private properties, all of which either have approved or in-process cannabis applications. Given that the setback reduction was already approved for the previously approved project, and BLM previously provided comments that did not object to cannabis being operated at this site and was officially referred on this project in April of 2021, the opposing Appellant's concern regarding the Bureau's lack of opportunity for participation is not valid. Of note is that the proposed project will be further away from publicly owned lands than what was previously approved.

13. Clarity of Conditions. The appellant contents that the Conditions of Approval are confusing, and it is unclear what was ultimately approved. The project description including the operations plan, plans and other information in the file define the project. The conditions imposed on the project then modify what is shown on the plans or modify how the use is to be conducted. The only thing unclear is that the Planning Commission reduced the size of the cultivation area. The plans do not show this reduction in area. This is not an issue as the allowed footprint will be refined when the applicant comes in to start cultivation, they will provide a revised site plan for 24,300 square feet of cultivation area rather than 43,560 square feet. The location of the reduced square footage would be within the footprint of the greenhouses on the site plan.

This is a Special Permit and in order to approve the permit the Board of Supervisors must find this application will not be detrimental to the public health, safety or welfare and that it follows the provisions of County code. There is an existing permit on the property which neighbors claim is operated in violation of the permit and provisions of the ordinance. If this is true, it raises the question of whether an expansion should be approved. Staff has not been able to verify the areas of non-compliance and the neighbors have stated that there was significant clean up conducted in the 11 days it took to schedule an inspection. There is significant concern about this site expressed by neighbors and the Bureau of Land Management. The struggle in this case is there is not empirical evidence showing that there are violations, there are many accusations, but no actual evidence. The Planning Commission struggled with this issue and the compromise was to reduce the size of the cultivation and add a couple of modified conditions. If it can be demonstrated, the site is currently operated in violation of the ordinance and provisions of the permit, an expansion should not be approved. Staff recommends this appeal be denied.

Appeal #2

The appellant contends that the project was code compliant and capable of being approved and the changes imposed by the Planning Commission were not needed to ensure compliance with County Code and that the Decision Packet issued by the department was confusing about what was approved. It is correct to say the Staff Report described a code-compliant project, however, the Planning Commission was faced with significant public comment expressing that the existing permit is not being operated in compliance with the provisions of the permit or ordinance and it is not outside of the authority of the Planning Commission to reduce a project's square footage in order to address issues.

In this instance, the Planning Commission did not have a successful motion to either approve or deny the application. The Commission discussed that they could support a reduction in square footage but did not address how this address the concerns expressed relative to water use, electricity use, violations of dark sky standards and use of the road. Since no specific findings were made to support the reduction and the reduction does not appear to address public concerns, the imposition of the reduction may appear arbitrary. This would be an appropriate ground for appeal. Staff recommends this appeal be granted.

It cannot be ignored that there is strong neighbor concern about the operation of the existing site. These concerns have not been confirmed but if they are determined to be true, the appropriate action would be to deal with the areas of concern. A reduction in a area is not directly related to these concerns.

Regarding the conflicting information within the Decision Packet, there was conflicting information in the Decision Packet. The original project description was used, which identified the square footage as being larger than what was approved. This could have been resolved without an appeal, but now that the appeal is filed, the action on the appeal will address this.

FINANCIAL IMPACT:

The appellants have paid the necessary filing fees; however appeal fees are held low so that the public is not precluded from filing appeals. The appeal fees do not cover the cost of processing an appeal.

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:

This appeal has two different appeals which result in several alternative actions which could be taken:

1. Approve the opposing appellant's appeal. This would overturn the Planning Commission action and deny the application (PLN-2021-17162). This would also involve denial of the applicant's appeal. This would result in the existing permit (PLN-12657-SP) to continue cultivating as

originally approved. If this option is chosen the item should be continued so that appropriate findings can be developed to support approval of the appeal and denial of the application.

2. Deny both the opposing appellant's and the proposing appellant's appeals. This would uphold the Planning Commission action on May 5th, 2022.
3. Deny both the opposing appellant's and the proposing appellant's appeals and approve the Special Permit with conditions to address concerns raised during the public hearing.

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 LaDonna Haga, Gary Haga, & Maureen Catalina
3. Appeal filed by Nava Ranch, LLC
4. Planning Commission Staff Report
5. Resolution of the Planning Commission, Resolution No. 22-054
6. Public Comments submitted to the Planning Commission
7. Public Comments

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A