



COUNTY OF HUMBOLDT

Legislation Text

File #: 21-188, Version: 1

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Appeal of the Planning Commission Actions to Approve the Rolling Meadow Ranch, LLC, Conditional Use Permits and to Adopt a Mitigated Negative Declaration

RECOMMENDATION:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the appellant, applicant, and public;
2. Close the public hearing;
3. Adopt the resolution (Resolution 21-__). (Attachment 1) which does the following:
 - a. Adopts the Initial Study and Mitigated Negative Declaration, State Clearinghouse No. 2020070339, with substitute mitigation measure Bio-16;
 - b. Makes the findings required to deny the appeal and approve the Conditional Use Permits;
 - c. Denies the Appeal;
 - d. Adopts the mitigation monitoring and reporting plan; and
 - e. Approves the Conditional Use Permits subject to the conditions of approval (Attachment 1A);
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 Jan. 21, 2021, approval of the Rolling Meadow Ranch, LLC, Conditional Use Permit applications to allow for the operation of 5.73 acres of mixed light cultivation and processing facilities located in four distinct cultivation areas in up to 16 greenhouses, in accordance with the county's Commercial Medical Land Use Ordinance (CMMLUO, "Ord. 1.0"). Processing, including drying, curing, and trimming, will take place on site within five proposed processing structures totaling 33,750 square feet, for a total project footprint of 8.5 acres, with a use of approximately 4,628,200 gallons of groundwater annually. There will be a maximum of 30 employees during peak operations. The proposed cannabis operation will be primarily located on APNs 217-181-028 and 217-201-001. The subject parcels are located within a 7,110-acre ranch that historically has been used for ranching and timber operations. The Planning Commission approved the Rolling Meadow Ranch, LLC, project and associated Mitigated Negative Declaration by a vote of 4-1.

Fran Greenleaf, John Richards, and Patty Richards ("Appellant") have appealed the decision and submitted a letter through their attorney stating why they believe that the Planning Commission's approval does not comply with the California Environmental Quality Act (CEQA) and "the Humboldt County Code and other applicable laws" (see Attachment 2). The primary concerns can be summarized as potential inadequate environmental review.

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 decision).

Background and Planning Commission Action

On Dec. 27, 2016, Rolling Meadow Ranch, LLC, applied for Conditional Use Permits for a total of the operation of 5.73 acres of mixed light cultivation and processing facilities located in four distinct cultivation areas in up to 16 greenhouses, and facilities to allow processing, including drying, curing and trimming within five structures totaling 33,750 square feet.

The project is located in the Blocksburg/Myers Flat area, on both sides of McCann Road, approximately 2.15 miles east from the intersection of Dyerville Loop Road and McCann Road, on the properties known as 2189 & 2487 McCann Road. The project is accessed by McCann Road using the McCann Bridge. At the property entrance, employees will park their vehicles and an electric bus or similar type vehicle will be used to transport employees to the cultivation and processing areas. Access through Alderpoint Road will be utilized during the rainy season when the low-water bridge is not in use until such time as the year-round bridge is completed (within ten years).

In addition to the greenhouses and processing facilities, Onsite Wastewater Treatment Systems (OWTS) and water storage tanks that will capture rain from the roof runoff and parking facilities are proposed. The overall footprint of the cultivation areas would be 5.73 acres and with all the associated development will be 8.50 acres. Hours of operation will be 7am to 7pm daily. There will be 30 employees maximum on site on any given day. Power will be provided by PG&E with generator

backup.

Estimated annual water usage is 4,628,200 gallons of water for both irrigation and domestic use. Water for irrigation is estimated to be 4,555,200 (approximately 18.4 gallons/sf). The applicant will utilize drip irrigation to conserve water and ensure there is minimal to no run-off. The proposed project includes rain catchment systems to capture runoff and will be stored near each greenhouse site in hard-sided water storage tanks. Each greenhouse will have 20,000 gallons of water stored in four (4) 5,000 gallons storage tanks. There will be 320,000 gallons of hard sided storage tanks for rainwater catchment on site. This stored rainwater water will be generally used for summertime landscaping and lawn maintenance around the facilities as well as fire protection and supplemental water for dust mitigation. Average annual rainfall is approximately 55 inches per year during an average year. Each processing facility will be larger than 4,000 square feet, therefore, more than 137,060 gallons of water could be captured by each of the facilities. Based on average annually rainfall and size of the processing facilities, 320,000 gallons of rain catchment can easily be collected.

The Commercial Medical Marijuana Land Use Ordinance (CMMLUO) provides the opportunity on parcels larger than 320 acres in size to permit new cultivation of up to one acre for each 100 acre increment, provided that the cultivation is located on prime agricultural soils that occupy no more than 20% of the total area of prime agricultural soils on the parcel.

The Planning Commission approved the project and its Mitigated Negative Declaration by a vote of 4-1, with Commissioner Peggy O'Neill the nay vote.

Setting, Access, and Neighboring Land Uses

The project is located on the north side of the main stem of the Eel River in southeastern Humboldt County. There are several natural drainage courses on the Property, including Cameron & Beatty Creek as well as ephemeral drainage swales. The project is set on a 7,110-acre ranch that has been managed in the past for cattle and timber production and is currently managed for timber production. The land in and surrounding the ranch is generally forested with open meadows. It has been historically used for and is currently used for cattle, timber production, cannabis cultivation, and rural residences.

The project will have two main access points (north access and south access) that will be used as needed to ensure safe year-round access to the project areas.

The primary access for the project is located off McCann Road. According to the Department of Public Works, this road is not developed to category 4 standards but is developed to an adequate functional classification for the proposed project. This County road currently crosses the Eel River using McCann Bridge, a low-water bridge. When the Eel River flow volume increases to 3,500 cubic feet per second (cfs), typically late November through late April, Humboldt County closes the McCann Bridge and vehicle traffic across the bridge is not possible. The County will be replacing the low-water bridge with a year-round bridge with an estimated completion date of 2025 (www.mccannbridge.com). Once McCann Road (West) reaches the property line, the roads become private ranch roads, which are classified as driveways under the Humboldt County Code. A gate with a guard station, bus drop off and turn-around, and 15 parking spaces will be built just after the entrance to the property (see draft

IS/MND - Figure 13). Employees will enter the property and park their personal vehicles at this location. An electric bus will transport the employees to and from the work sites. This will greatly limit the traffic on the private roads.

Alderpoint Road will provide cannabis project access when the low water bridge over the Eel River (McCann access) is not available (typically late November through late April). Alderpoint Road is a major rural collector for Humboldt county with speeds up to 45 mph. From the intersection of Alderpoint Road, project traffic accesses the project areas through a combination of travel on-property roads and deeded easements. From Alderpoint Road, the length traveled on interior project roads and easements to the nearest Facility (Facility #16) is 8 miles; the length of the interior roads traveled to the furthest Facility (Facility #1) is approximately 12.3 miles.

According to the applicant, the project will use the McCann Rd during dry times of year when the seasonal bridge is accessible and Alderpoint access when it is not. As the new McCann bridge is currently expected to be built in 2025, the northern/southern access combination will effectively cease in 2025 and the project will use the southern access via McCann Rd. as the primary access for all year-round operations.

Applicant Proposed Actions to address Public Concerns

Attachment 10 is a letter from the applicant proposing refinements to address concerns expressed in the appeal. The changes include:

1. Employees will park at the park and ride lot on Hwy 101 and be picked up by bus to the extent feasible.
2. The applicant will periodically treat the dirt portion of McCann Road in front of residences with Lignin Oil or similar product to control dust
3. The project will purchase a Tanker Truck to have on hand in case of fire.

These have been added to the findings and conditions of approval. These refinements will not cause any new environmental effects.

Neighborhood Concerns

Concern has been raised by referral agencies and members of the public regarding the potential of new cannabis applications to disrupt the high habitat values of the area and the overall scenic and rural quality of life. The CMMLUO does not distinguish between any one portion of the county and another, and the subject property's parcel size, zoning, general plan designation and access are all appropriate for cannabis permitting under the CMMLUO. The project has been designed to minimize the impacts of new development on the surrounding area, including the use of a van pool to limit traffic, and mitigation requiring architectural treatments on retaining walls, and native tree plantings to soften or block visual impact from surrounding properties or any public vantage point.

Appeal

The basis of the appeal is set forth in the appeal letter submitted by Holder Law Group (HLG) on behalf of Fran Greenleaf, John Richards, and Patty Richards, received by the Planning and Building Department on February 2, 2021 (Attachment 2). The following discussion addresses issues raised by HLG in the appeal:

Appeal Issue 1: The Appellant Asserts the Project Improperly Relies on a Mitigated Negative Declaration Where There is a Fair Argument Based on Substantial Evidence that the Project May Result in Multiple Significant Environmental Impacts

A. *The appellant states that there is a low threshold for preparation of an EIR, and that Appellants and others previously presented evidence supporting their comments which satisfy the “fair argument test.”*

The appellant argues that there is a “low threshold” for preparation of an EIR and that an EIR must be prepared where there is a reasonable probability that the project will result in a significant impact.

Staff Response: A fair argument must be based on substantial evidence, such as factual data or expert opinion. As stated in CEQA section 21082.2(b): *The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.* Section 15064(f)(5) of the CEQA Guidelines further states that *“Argument, speculation, unsubstantiated opinion or narrative ... shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions based upon facts, and expert opinion supported by facts.”* Without demonstrating how a fair argument may have been made, the appellant lists several reports and communications that occurred during project processing as apparent examples of establishing a fair argument. While the appellant argues that they have submitted two expert reports concerning potentially significant impacts: 1) from geologists concerning water supply and water quality and 2) from a civil engineer concerning the adequacy of McCann Road to meet the county’s requirements for access. 1) The letter from geologists discussing potential water supply and quality impacts is speculative and cites no substantial evidence and does not state that they believe there are potentially significant impacts, and 2) The letter from a civil engineer concerning the adequacy of McCann Road acknowledges that the Director of Public Works may determine adequate functional classification, which in this case he has. The appellant has not provided fact-based evidence or expert opinion that the project may result in a significant adverse impact that would rise to the level of a fair argument. The appellant often refers to comments made by CDFW, but as stated in the finding and Planning Commission staff report these comments have all been addressed.

B. *The appellant states that others presented a fair argument of significant environmental impacts on several major issues.*

i. *Access and Safety*

The appellant states that project access roads do not satisfy minimum Fire Safe and Emergency access standards.

Staff Response: According to Humboldt County Department of Public Works, the access road is developed to an adequate functional capacity for the proposed project. The concept of functional capacity comes out of the fire safe standards to take into account the volume of the road relative to road capacity. A road with adequate functional capacity can accommodate the volume demands of the road and emergency response vehicles.

ii. *Impact of wells on Aquatic Resources and Water Quality*

The appellant states that groundwater withdrawal from the project's wells has the potential to cause significant impacts to aquatic resources and water quality.

Staff Response: As noted in the IS/MND these wells are all deep groundwater wells that have screening intervals that strongly indicate that they are not connected to the underflow of any surface water features and this would indicate no direct impacts to aquatic resources. This analysis was performed by staff and is supported by the opinion of the well driller, Dave Fisch, who has extensive expertise installing and working with wells in Humboldt County.

iii. *Investigation of Biological Resources Incomplete and Inadequate*

The appellant states that biological surveys along the winter-access road should be required and cites CDFW comments on the possible need for a Lake & Streambed Alteration Agreement (LSAA), and improvements to the winter-access road, as the reason.

Staff Response: The appellant is transferring CDFW comments on one item to another. The winter-access road to Alderpoint Road is an existing road. Plant surveys have been completed for all portions of the project site and proposed roads and improvements with the exception of the existing road to Alderpoint Road. A field evaluation conducted by Manhard Consulting in January 2018 concluded that the existing Alderpoint Road is very low use and the design may remain in place, a Road Assessment prepared by Northpoint Consulting Group, Inc. dated October 2020 identified only three portions of the road to Alderpoint that would require any improvements in order to meet an adequate functional classification and that the only improvement that would not be able to occur completely within the existing road prism is the replacement of a bridge in the same footprint. There is no need for additional biological surveys related to the winter-access road.

C. *Insufficient Project Description*

The appellant states that the project description is unstable, inconsistent, and uncertain, and that it does not describe the “whole of the project”.

Staff Response: The project description is exhaustive and complete as contained in the recirculated IS/MND and in the Findings of Fact presented to the Planning Commission. The project description was refined prior to recirculation of the IS/MND with clarifying information and with conditions of approval in response to questions by commenters, including in response to questions from the appellant.

D. Request for additional Conditions of Approval to Reduce Impacts

The appellant proposes a list of 16 modified or new conditions of approval in areas related to roads and access, safety and fire, site design, power supply, and water supply and water quality. The appellant’s proposed new or modified conditions are listed as an attachment to the HLG letter of appeal, Attachment 2 to this Board staff report.

Staff Response: The complete list of 29 conditions of approval that were approved by the Planning Commission, and list of 17 mitigation measures in the Mitigation Monitoring and Reporting Program that was adopted by the Commission, are contained in the attached draft resolution for Board adoption. The appellant’s assertions present no new issues or information that warrant changes or additions to the list of conditions of approval.

Appeal Issue 2: The Appellant Asserts the Project is Inconsistent with Humboldt County Regulations Related to Cannabis and Fire Risk

A. CMMLUO

The appellant states that the project is inconsistent with the Medical Marijuana Land Use Ordinance (CMMLUO, “Ordinance 1”), and that the project application should instead be processed under the provisions of the Commercial Cannabis Land Use Ordinance (CCLUO, “Ordinance 2”), based on a question of topography and prime soils.

Staff Response: During Planning Commission hearings concern was raised regarding the multiple acres of cannabis proposed and the “industrial” scale of the project. Section 55.4.8.2.1.1 of the CMMLUO states, “...On parcels 320 acres or larger in size, in the eligible zoning districts described in 55.4.8.2.1, one additional cultivation area permit of up to one acre each for each one hundred acre increment (e.g. 3 for a 320 acre parcel, 6 for a 600 acre parcel, etc.), up to a maximum of 12 permits, may be issued with a Use Permit, subject to the limitations contained in section 55.4.8.10. No more than 20% of the area of Prime Agricultural soils on the parcel may be utilized for commercial medical marijuana cultivation activities.” The subject parcels are located within a 7,110-acre ranch historically used for timber production. The parcels are split-zone Agriculture Exclusive and Timberland Production (AE/TPZ). All proposed cultivation will be occurring on the AE-zoned portion of the parcels as required by the CMMLUO. There are 1,289,668 square feet of prime

agricultural soil of which 257,998 square feet is 20%. The cultivation area proposed is 5.73 acres (or 249,598 square feet), which equals 19.3% of the prime agricultural soil area. All cultivation areas will be located on slopes of less than 15%. Therefore, the project meets the CMMLUO requirements for new cultivation. Further, the application was submitted for processing in December 2016 before implementation of CCLUO, and was appropriately processed under the CMMLUO based applicable County Code criteria.

B. Fire Regulations

The appellant states the project is inconsistent with the County's Fire Safe Regulations in relation to access, that McCann Road and the private access driveway be expanded to Category 3 standards, and that the McCann Bridge does not meet the weight bearing capacity of emergency response apparatus.

Staff Response: The project is required to adhere to all CalFire regulations and standards regarding fire safety. County Public Works states that McCann Road is developed to an adequate functional classification for the project. According to Caltrans the current bridge is rated to carry all legal loads. A Road Evaluation/Access Assessment prepared by Northpoint Consulting Group, Inc. in October 2020 concluded that the project conforms to County Code Fire Safe Regulations with recommended improvements, which have been made conditions of approval.

C. County General Plan

The appellant states that the project does not conform to County General Plan policies related to access roads in areas of fire risk; specifically, Safety Element policies; as well as Water Resource policies and potential diversion of surface water from groundwater wells.

Staff Response: A Road Evaluation/Access Assessment prepared by Northpoint Consulting Group, Inc. in October 2020 concluded that the project conforms to County Code Fire Safe Regulations with recommended improvements, which have been made conditions of approval.

The appellant states that the depth at which the wells is drawing water indicates that it is connected to surface water features, however this conclusory statement includes no relevant data to support the contention. Staff's analysis of the depth and location of the wells relative to surface water features indicates that it is not hydrologically connected to surface water features.

Appeal Issue 3: The Appellant Asserts the Project's Impacts Require Preparation of an EIR, and Inconsistencies with the General Plan and County Code Require a Redesign of the Project.

Appellant believes that based on the foregoing issues of appeal, an EIR should be prepared.

Staff Response: The appellant has not provided new information that would alter staff's recommendation to adopt the Mitigated Negative Declaration and approve the project.

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 scale of the proposed project and have expressed the opinion that the proposed 5.73 acres of cultivation (8.5 acre footprint) is too large for a rural property such as this. However, these objections do not consider the fact that the 5.73 acres of cultivation is being proposed on a 12,072 acre ranch property that has historically been held and operated as a single ranch property. The overall intensity of cannabis development is lower than in other areas where there are large numbers of cannabis applications, many of which are former ranches that have been broken up and sold in smaller holdings. The following table identifies former ranches which have been divided up into smaller holdings with the intensity of cultivation activity:

Location	Area (Acres)	Cultivation Area (Acres)
B&B Ranch (Titlow Hill)	3,670	15
Tooby Ranch	21,000	19
Tooby & Prior Preserve	11,274	5.59
Palo Verde Estates	17,257	43
Larabee Valley	13,168	49
Rolling Meadow	12,072	5.73

Attachment 7 shows the respective applications for each of these areas.

A contemporary issue is how can large land holdings be kept intact. Providing the opportunity to cultivate provides a source of income and would discourage division of the property.

The proposed Project is consistent with the Humboldt County Zoning Ordinance and General Plan, and the environmental review conducted for the project has found no significant impacts that cannot be mitigated to a level of less than significance.

FINANCIAL IMPACT:

There will be no additional effect on the General Fund. The appellant has paid in full the appeal fee associated with this appeal.

STRATEGIC FRAMEWORK:

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

OTHER AGENCY INVOLVEMENT:

California Department of Fish and Wildlife, Division of Environmental Health; Department of Public Works, Land Use Division.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may consider the following alternatives:

1. Uphold the appeal, overturn the Planning Commission approval, and require preparation of an EIR. The Board may decide that the project in its present form would adversely harm the existing physical, aesthetic and environmental character of the community and would therefore 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 Rolling Meadow Ranch 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.

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
2. Appeal filed by Fran Greenleaf, John Richards, and Patty Richards, dated February 2, 2021.
3. Resolution of the Planning Commission
4. Planning Commission Staff Report
5. Mitigated Negative Declaration
6. Project Site Plans
7. Cultivation area comparison:
 - (a) Titlow Hill
 - (b) Tooby Ranch
 - (c) Tooby & Prior Preserve
 - (d) Palo Verde Estates
 - (e) Larabee Valley
 - (f) Rolling Meadows
8. 2021 Golden Eagle Assessment prepared by NRM
9. Public Comments
10. Letter from Applicant addressing concerns.

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A