



COUNTY OF HUMBOLDT

Legislation Text

File #: 24-255, **Version:** 1

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

Vote Requirement: Majority

SUBJECT:

Revocation of a Conditional Use Permit for an Existing 23,693 Square Foot (SF) Outdoor Cannabis Cultivation Operation with Appurtenant Propagation Area and Proposed Processing Facility

RECOMMENDATION(S):

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the permit holder (also referenced herein as applicant) and testimony from the public on any of the additionally submitted information;
2. Close the public hearing;
3. Adopt the resolution (Attachment 1) which does the following:
 - a. Finds that the permit has been exercised contrary to the terms or conditions of approval, and that the use for which the permit has been granted has been conducted as to be a public nuisance; and
 - b. Revokes the Conditional Use Permit pursuant to Section 312-14 of the Humboldt County Code.
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:

There is no identified funding source for this action. This is funded by the General Fund Contribution to department operations.

DISCUSSION:

Executive Summary

Revocation of this permit is appropriate because the permit has been operated contrary to the terms and conditions of approval and the use for which the permit was granted has been conducted as to be a public nuisance. The Planning Department has conducted two annual inspections of this operation and documented cannabis ordinance violations, building code violations, and safety and environmental concerns. Operations have ceased since 2022, but unapproved greenhouse and hoophouse structures remain on-site, including associated infrastructure and waste. This includes unpermitted and unapproved electrical fixtures and wiring. Finally, the permit holder is required to participate in a Road Maintenance Association per the Commercial Cannabis Land Use Ordinance adopted by the Humboldt County Board of Supervisors on May 8th, 2018. Several attempts have been made by phone, email, and letter to contact the permit holder regarding this requirement with no success.

Project History

The project was filed on Sept. 22, 2016, and approved on June 8th, 2020, for applicant Cody MacDonald of Tree Pharm LLC. The

permit was later transferred to the current permit holder Mihailo Lucic on July 7th, 2020 and a Compliance Agreement was executed with the new owner on March 17, 2021. The Compliance Agreement requires fourteen conditions to be completed within a 2-year period in order to achieve compliance with Humboldt County Code. In addition, the operator is required to comply with the ongoing requirements approved by the Humboldt County Planning Commission. As of March of 2024, the majority of these items have not been completed and the site is being maintained so as to be a public nuisance.

An annual inspection on July 15, 2022, identified the following violations of the Conditional Use Permit which were documented on the site again during a Feb. 2, 2023 inspection:

- a) Solid Waste. Large amounts of solid waste and improperly stored and potentially hazardous materials were found on the property. This includes broken down vehicles (itself a violation of Section 5900 of the Vehicle Code) and spent uncovered soils. These are a violation of the North Coast Regional Water Quality Control Board Cannabis Waste Discharge Regulatory Program and a violation of Conditions of Approval Number 5 and Number 10 of the Conditional Use Permit, as well as various ongoing requirements of the Conditional Use Permit.
- b) Monofilament Netting. A condition of approval prohibits use of synthetic monofilament netting to be used in erosion control on the site due to the hazard it poses to local wildlife (COA Part B #3). The property has been found to have monofilament netting on the property in violation of this condition. The netting is also uncontained on the site and poses a direct threat to wildlife.
- c) Lighting. The site was approved for outdoor cultivation, yet lighting and wiring were observed in structures that were not approved for artificial lighting. This is an unpermitted expansion of the permitted use of the site as mixed-light cultivation is not authorized by this permit.
- d) Water Monitoring. Conditional of Approval #11 of the permit required installation of a water meter in order to monitor the use of the diversion for cannabis irrigation and ensure compliance with the required forbearance period. The required water meter was not installed nor were the water use logs made available during the inspection.
- e) Violations of Building Requirements. The Ag-Exempt status approved by the Building Division specified no power. Various unpermitted electrical wiring exists throughout the operation including a breaker mounted to a growing oak tree.

The Inspection Report was completed and sent to the permit holder on July 20th, 2022, via email. A follow up email was sent to the permit holder one month after the inspection on Aug. 17, 2022, as a reminder to provide photographic proof that the issues in the report were resolved. No correspondence was received from the permit holder for the remainder of 2022. Phone calls and emails were sent to the permit holder on multiple occasions during the winter months of 2022 and a non-conformance letter was sent by US mail on Jan. 17, 2023.

It was not until Feb. 3, 2023, when a second inspection was able to be coordinated with the permit holder. Unfortunately, due to scheduling issues, the operator was unable to meet with the county

staff during the scheduled inspection. The second inspection found that limited progress on resolving these issues had been made and all violations remained.

An inspection report was completed later that afternoon and sent to the permit holder. The inspector was also able to speak directly with the operator to discuss issues found on site. Deadlines were discussed and recorded in the report giving the operator several weeks to come into compliance. A follow up letter was sent on Feb. 23, 2023, reminding the permit holder of the corrective actions needed. No response was received from the permit holder.

In August of 2023, the permit holder was sent correspondence regarding the requirement to create and/or join a Road Maintenance Association per Humboldt County Code (§314-55.4.12.1.8.4) along the shared private road (easement) known as "Tree Farm Lane" which serviced the permitted commercial cannabis property. Several attempts were made to contact the operator, but no response was received.

Starting on Nov. 13, 2023, phone calls were made, and emails sent to the permit holder stating that unless the property and operation was brought into compliance, the Humboldt County Planning and Building Department would begin the revocation process. Three sets of letters and emails were addressed to all known address associated with the permit holder giving instructions of how to contact the Department and come into compliance. These dates included Nov. 13th, 20th, 22nd, 29th and December 4th and 11th. No responses were received from the permit holder and several letters were "returned to sender" stating no forwarding address. As of Feb. 15, 2024, no issues have been resolved and a notice of public hearing to consider revocation of the Conditional Use permit was sent to the applicant/permittee.

On Feb. 14, 2024, the Department sent the property owner the Notice via USPS Certified to the two owner addresses on file. On March 1, 2024, the Department physically posted two Notices at the entrance to the subject site.

Grounds for Revocation

Section 312-14 of the Humboldt County code includes the findings that are required to be made in order for the Board of Supervisors to revoke a development permit. A permit may be revoked upon making any one of the four findings specified in this section of the ordinance. Two of the four findings can be made, as follows:

1. The permit has been exercised contrary to the terms and conditions of such approval (312-14.1.2).
 - a. Condition of Approval #2 requires permits for all ag exempt structures and grading. The issued permit BLD-2020-51848 called for no electrical in greenhouses except for the

nursery. County staff found unpermitted electrical in several greenhouses, including unapproved lighting sources. Violations of electrical code also exist.

- b. No water meter installed and waterlogs not available upon request.
 - c. Permit holder failed to complete Conditions of Approval #2-5, #7-11, #13-14, and #16 only partially or not completed.
 - d. Condition of Approval #16 of the issued Conditional Use Permit states that the applicant is required to cover all permit processing costs associated with processing the application. An outstanding balance \$3,872.66 has occurred and has been sent to collections.
2. The use for which the permit was granted is so conducted as to be a public nuisance (314-14.1.3).
- a. Ongoing requirements 4 and 14 (hazardous materials) and (solid waste) violations reported during past two inspections. Secondary containment was not observed during the second inspection and the inspector noted improperly stored combustibles). These chemicals included gasoline, fertilizers, and pest control chemicals. Monofilament was found to not be disposed of properly, which could lead to animal entrapment.
 - b. Various structures on the property are not in compliance with the issued building permits or have not obtained appropriate building and electrical permits. Several electrical code and safety violations were found in existing greenhouses, including an electrical mounted directly on growing vegetation (oak tree). These violations pose a safety and wildfire hazard.

The failure to have properly installed electrical infrastructure can be a hazard to the permit holder, employees, and the public. Unpermitted and improperly installed electrical components pose a risk to the property and the possibility of a wildland fire to the surrounding community.

FINANCIAL IMPACT:

There are no funds that have been identified to cover the costs of processing this revocation.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework through its core roles to enforce laws and regulations to protect residents. Revocation of this Conditional Use Permit will facilitate the necessary actions to remediate this issue.

Core Roles: Enforce laws and regulations to protect residents

New Initiatives: N/A

Strategic Plan: 3.2 - Stabilize and support a successful cannabis economy

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to revoke the Conditional Use Permit. The Planning and Building Department does not recommend this because the continued environmental and safety concerns on the property as well as, the continued cost of future compliance efforts.

ATTACHMENTS:

1. Draft Board Resolution and Findings
2. Planning Commission Resolution of Approval
3. Inspection Reports
 - A. 2022 Annual Compliance Inspection - July 15, 2022
 - B. 2023 Annual Compliance Inspection - February 3, 2023
4. Letters of potential permit revocation
 - A. PLN-11207 Permit Revocation 1st Notice - January 17, 2023
 - B. PLN-11207 Permit Revocation 2nd Notice - February 23, 2023
 - C. PLN-11207 Grebo Non-Compliance Letter 1 - November 22, 2023
 - D. PLN-11207 Grebo Non-Compliance Letter 2 - December 4, 2023
 - E. PLN-11207 Grebo Non-Compliance Letter Final - December 11, 2023
 - F. Notice of Public Hearing to Consider Revocation Letter - February 15, 2024
5. Photographic Evidence
6. Evidence of posting of site

PREVIOUS ACTION/REFERRAL:

Meeting of: June 4, 2020, Planning Commission
File No.: 20-676