



COUNTY OF HUMBOLDT

For the meeting of: 1/24/2023

File #: 22-1652

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Time Certain Matter

SUBJECT:

1:30 PM - Petrolia Chambers Road Residents and Landowners Appeal of the Planning Commission Decision to Approve a Conditional Use Permit for 130,680 Square Feet (sf) of Outdoor Cannabis Cultivation, 43,560 Square Feet of Light Deprivation Cannabis Cultivation, 43,560 sf of Mixed-Light Commercial Cannabis Cultivation, Employee Housing, Zoning Clearance Certificates for a Processing Facility and 67,760 sf of Commercial Nursery Space and a Conditional Use Permit for Use of a Road not Meeting the Requirement for a Paved, Category 4 road with a Centerline Stripe for a Cannabis Support Facility and Large Cannabis Cultivation Site

RECOMMENDATION:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the appellant and applicant, and testimony from the public on any of the additionally submitted information; and
2. Close the public hearing; and
3. Adopt the resolution (Resolution 23-__). (Attachment 1) which does the following:
 - a. Adopt the Mitigated Negative Declaration prepared for the Cisco Farms, Inc.; and
 - b. Find the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Deny the Appeal submitted by Petrolia Chambers Road residents and landowners; and
 - d. Approve the Conditional Use Permit to allow 5 acres of Cannabis Cultivation, a Conditional Use Permit to allow use of a road not meeting Category 4 Road Standard for a Cannabis Support Facility and Large Cannabis Cultivation Facility subject to the recommended conditions of approval: and
 - e. Approve Zoning Clearance Certificates for a processing facility and 67,760 sf of commercial nursery space: and
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:

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

DISCUSSION:

Executive Summary

This is an appeal of the Humboldt County Planning Commission's November 17, 2022 approval of the Cisco Farms, Inc Conditional Use Permits. Petrolia Chambers Road residents and landowners are appealing the decision, citing cumulative impacts, traffic, fire safety, enforcement of conditions, electrical power, water, and issues with the public input process. The Planning and Building Department does not support the appeal and recommends the appeal be denied and the project approved.

Project Information

In July of 2021, an application was submitted by Cisco Farms, Inc. for a Conditional Use Permit to commercially cultivate cannabis on APN 105-101-011. The project proposed five acres of new cannabis cultivation with commercial nursery space, drying and processing activities, and employee housing, pursuant to the requirements of the CCLUO. The project proposed solar power and grid power, a rainwater catchment system to provide irrigation water, and a well to provide water for employee and processing use contingent upon a geologist evaluation of the proposed groundwater well. The staff recommendation to the Planning Commission identified that the project complied with the requirements of the CCLUO, and a project specific Mitigated Negative Declaration had been prepared finding there were no significant unmitigable impacts resulting from the project. The project was heard before the Planning Commission on November 17, 2022 and was approved by unanimous vote (YES: Levy, Mulder, O'Neill, Newman, McCavour).

Appeal

An appeal was timely filed on December 5, 2022, by Dan Berger representing an entity calling themselves the Petrolia Chambers Road Residents and Landowners (Appellant). During the circulation period for the Initial Study/Mitigated Negative Declaration (ISMND) prepared for the project, many of the people who appear to be represented within this group submitted public comments in opposition to the project. There were a number of issues raised which are further described in a supporting email submitted by Dan Berger after the appeal was filed. The Appellant's objections are summarized in the sections below, with staff responses *italicized*.

Cumulative Impacts: The Appellant contends that the project as proposed will have significant impacts on the Petrolia area, with an emphasis on the Chambers Road neighborhood. The Appellant suggests that the one-mile radius utilized to measure cumulative impacts in the area is an arbitrary limit, and that the cumulative impacts at the watershed level are too broad to be useful in determining cumulative impacts in the Petrolia area. The applicant also cites the Humboldt Cannabis Reform Initiative as evidence for the claim that the cumulative impacts analyzed at the watershed level are potentially inadequate.

Staff Response: A one-mile radius buffer zone captures a dense concentration of additional cannabis projects in the immediate area of the proposed project. It is important to understand that the environmental analysis of this project is layered. The EIR certified for adoption of the CCLUO is the programmatic master document. The mitigation measures from the EIR are embedded into the CCLUO, so compliance with the ordinance addresses the cumulative impacts analyzed by the EIR.

To effectively monitor the impacts of cumulative cannabis cultivation, the Board of Supervisors adopted Resolution 18-43 approved by the Humboldt County Board of Supervisors limits setting a cap on the number of permits that can be issued and the total acres appropriate of cultivation within each planning watershed consistent with the adopted EIR prepared for the Commercial Cannabis Land Use Ordinance. The project is proposed within the Cape Mendocino Planning Watershed, which has a cap of 650 permits and 223 acres. Approval of this project would result in 228 approved permits and 84.52 acres of cultivation in the Cape Mendocino Planning Watershed.

The appellant argues that because the project is more than a mile up a dead-end road from “Greater Downtown” Petrolia and so the impacts on people and institutions in that area were not considered. County records do not show unaccounted for and foreseeable planning projects in the “Greater Downtown” Petrolia. The one-mile analysis allows consideration of potential impacts to the rural area east of Petrolia. There are not cannabis applications in the Petrolia area that would contribute to cumulative impacts that would be captured if the radius was expanded to include this area. Additionally, as noted by the appellant, this project is more than a mile up a dead-end road from the “Greater Downtown” Petrolia area and allows consideration of the impacts associated with all approved and pending applications along that road.

Traffic: The Appellant believes the Negative Declaration depends on a study that underestimates the traffic generated by the project and assumes employees will lead monastic lives.

Staff Response: The study referenced estimates 68 trips by employees daily at the peak of operations and this includes employees who will live and work on site. That estimation is included to allow for the possibility of workers living on site to travel into town daily. This assessment does not assume employees residing on site will live “monastic” lives, rather it assumes the probability of trips off the property by all employees. Trip generation information from the Institute of Transportation Engineers (ITE) indicates that for apartments, the trip generation per person on a weekday is on average 3.35 trips. Given the fact that the employees living on site have no need to commute to work, trip generation for the employees living on site is estimated at 1.35 trips daily based on ITE data. Two trips per day for employees living onsite is a more conservative estimate and therefore appears appropriate. There is no indication that additional trips are necessary for the estimation. It may also be important to note that the peak number of employees traveling Chambers Road would only occur seasonally, and only at full project buildout. Additionally, according to the engineer prepared report Chambers Road is a very low-volume local road, as it has a local road with a design average daily traffic volume (ADT) of 400 vehicles per day or less. Each of the 34 employees proposed for the project at peak operations could make nearly six trips per day before exceeding the 400 ADT when factoring in other traffic on Chambers Road. For the majority of the annual project operations, the number of employees is

proposed to be 12, and, therefore, the number of trips during the majority of the year will be substantially lower than the peak. Current traffic on Chambers Road is estimated to be 202 trips per day based on existing cannabis projects, and 5 trips per day for the 24 parcels that take access from Chambers Road. The community use estimate is based on the Design Standards for Roadway Category (HCC Title III Div. 2 Appendix § 4-2(c)).

Public Safety: The appellant contends that the anticipated increase in traffic presents a safety hazard related to emergency ingress and egress, that the roads do not meet SRA Fire Safety Regulations, that 25 miles per hour is too fast for the road, and that the Project is outside the Petrolia Volunteer Fire Protection District.

Staff Response: The applicant's engineer prepared a Road System Evaluation Report verifying that Chambers Road meets SRA Fire Safe Requirements. The report also verifies that pinch points have good visibility with turnouts available on either side to facilitate safe ingress and egress, and that Chambers Road is a Category 4 equivalent roadway. The applicant has also supplied an alternate emergency ingress/egress route, shown in the attachments (Attachment 9). The project was referred to CalFire, who provided no comment, and the Petrolia FPD, who recommended approval with the request that the applicant supply 2,500 gallons of water storage for fire suppression and adequate emergency vehicle access. The applicant has supplied a will serve letter from the Petrolia VFPD stating that they will serve all portions of the proposed project. There is no indication from responsible referral agencies that Chambers Road is unsafe for the proposed use.

Enforcement of Conditions: The Appellant believes that the County cannot assume that the impacts will be mitigated by conditions on permits, as it is their belief that conditions on permits are not adequately enforced.

Staff Response: Enforcement of conditions on permits is conducted by the County Post Approval Monitoring team. All permits are required to undergo annual inspections to keep the permit valid, and light and noise requirements are further enforced via complaint driven inspections. All approved permits were inspected in 2022. Over 900 had in person site inspections, and 400 of the project applicants were given notice that they were going to be inspected remotely. These inspections involved review of the site improvements for conformance to the approved site plans and phone conversations with the applicant. During the periods of the year when lights are used in Greenhouses, the Planning and Building Department has conducted nighttime reconnaissance of the County to identify violations of the dark sky standards. If a light or noise complaint is received, the permit holder is required to correct the violation within ten days. Repeated violations may result in code enforcement action or permit revocation.

Electrical Power: The Appellant is concerned that the current PG&E power is insufficient.

Staff Response: Power will not be supplied solely by the existing 200 amps on site. The applicant has proposed a solar array to be constructed in conjunction with the phased project buildout. The applicant modified the project away from including an acre of mixed light to an acre of light deprivation resulting in 3 acres of outdoor and 2 acres of light deprivation. The applicant had planned

to not initiate the final phase of the project (1 acre of mixed light cultivation) until a proposed PG&E upgrade has been installed and this was in the conditions of approval. Application materials indicate that the proposed solar array will supply sufficient power for operations up to the final phase. Conditions of approval include demonstration of adequate renewable energy onsite prior to commencement of each phase of operations or release of building permits.

Water: The Appellant contends that the rainwater catchment calculations overestimate efficiency of rainwater catchment systems and underestimates evaporative losses. The Appellant further asserts that collection efficiency is often estimated at 75%, citing a study (Rahmat et al. 2020). The Appellant believes the 75% collection efficiency should be factored into rainwater catchment calculations in addition to the anticipated evaporative loss of 26%. The Appellant also believes water use by employees is underestimated, and that the condition requiring an analysis of the hydrologic connectivity of the proposed groundwater well for processing and employee use is an improper deferral of analysis.

Staff Response: Rainwater catchment calculations anticipate an annual evaporative loss of approximately 26%. No evidence has been submitted to indicate that an increased estimate is appropriate. The study referenced by the appellant that estimates collection efficiency at 75% is analyzing rainwater catchment systems for residential uses. This change in use includes a number of factors not pertinent to a large-scale agricultural operation, including first flush practices, potentially porous rooftop materials, and reservoir overflow during periods of intense precipitation. None of those factors are pertinent to this project, and, as such, the collection efficiency and evaporation estimates are within acceptable margins.

To date the applicant has not drilled a test well on site, and, as such, no geologist evaluation can be performed. The project has been conditioned to either provide a geologist evaluation of the proposed well, or transition completely to rainwater catchment as the sole water source for the project. With the inclusion of the recommended condition the project will not have an impact on groundwater resources. No deferment of analysis has occurred. After a geologist evaluation of the well has been submitted and approved, the groundwater well will be subject to the Division of Environmental Health permitting process.

Issues with Public Input: The appeal expresses concern the Planning Commission did not review the public comments submitted during the CEQA circulation period. The Appellant is also concerned that staff did not point out the letters in the attachment when a commissioner stated that the project had much support from the neighbors. The appellant also states that technical problems occurred during the hearing that prevented the public from participating remotely.

Staff Response: The letters of opposition received during the CEQA circulation period were included as an attachment to the Staff Report. Copies of the Staff Report (including all of the letters of opposition) were submitted to the Planning Commission for their review prior to the public hearing. Additionally, the staff presentation to the planning commission identified the public comment letters and summarized the issues as well as the staff response to the concerns raised. During the hybrid hearing, members of the public were able to make comment, and the decision-making conversation and

vote were viewable by the members of the public. It is not clear why people had trouble participating remotely. The noticing was correct, the hybrid links to the meeting was correct and the meeting was broadcast in the normal manner.

Additional Objections Found in Letters of Opposition

The following concerns have been raised by members of the public though they were not specifically identified in the appeal.

East Mill Creek: Concern that the project will result in depletion of water into East Mill Creek to a degree that will cause disruption of riparian habitat and detrimental impacts to aquatic wildlife.

Staff Response: The rainwater catchment system as proposed represents a detention of less than one percent of the water that would fall on the 517-acre property during a drought year, leaving over ninety-nine percent of the annual precipitation to recharge surface waters and percolate into the soil as usual. The rainwater catchment system will not have a significant impact on surface water or groundwater recharge.

One Lane Bridge: The one lane bridge on Chambers Road is a point of concern for traffic impacts and fire safety.

Staff Response: The applicant submitted a road evaluation report prepared by a licensed engineer, which found that the road, including the one lane bridge, has the capacity to support the increase in traffic. The one lane bridge is classified as a pinch point, but includes good visibility and turnouts on both sides to allow for traffic to safely use the bridge.

School Crossing and Pedestrian Use: Concern with increased traffic along Chambers Road through the school zone and potentially in conflict with pedestrian use of Chambers Road. Poorly maintained signage in the school zone has been cited as an additional concern.

Staff Response: Pedestrian facilities are present in the form of crosswalks associated with signage designating a school zone and crossings, the remainder of Chambers Road has no existing pedestrian facilities. Signage in need of maintenance can be reported to The Public Works Road Maintenance Division at (707) 445-7421, or online at <https://humboldt.gov/FormCenter/Public-Works-12/Request-for-Service-on-County-Maintained-106>. All other factors appear to make the school zone safe for pedestrian use including the crosswalks and 25 mph speed limit. For the segments of Chambers Road with no pedestrian facilities, when pedestrians enter the right of way at their own risk. Current trips (including existing cannabis operations and residential use) are estimated at 202 daily trips, and approval of this project would result in an increase of 68 trips, for a total estimated 270 trips per day at peak operations. Employees and contractors for the proposed project would be similarly required to follow posted speed limit signs and drive with caution. The road is Category 4 equivalent, with ample sight distance along the relatively straight road. The project would not remove or impact existing pedestrian facilities, and the majority of project related traffic would occur outside school pick up and drop off times.

Light and Noise: Concerns regarding noise and light impacts.

Staff Response: The project has been conditioned such that all artificial light shall be fully contained within structures such that no light escapes consistent with International Dark-Sky Association standards. The CCLUO states: noise from cultivation and related activities shall not result in an increase of more than three decibels of continuous noise above existing ambient noise levels at any property line of the site. Ambient noise levels on site range from 30 to 58 dBA. This will be the standard this site is required to operate at. Annual compliance inspections measure noise levels to ensure compliance with permit conditions.

Williamson Act Contract: Compatibility with the existing Williamson Act Contract on the property.

Staff Response: The property has historically been used for grazing activities consistent with the Class B requirements. Current activities include a grazing lease for a dairy operation owned by Mr. John Vevoda. The project was referred to the Williamson Act Committee for hearing on June 27, 2022, where the project was recommended for approval with a 3-1 vote.

Possible Resale: Concerns with the potential for the permit to be sold in the future to a ‘larger entity’ with no concern for the neighbors or community of Petrolia.

Staff Response: Evaluation of a land use permit is not an evaluation of an individual, it is an evaluation of whether the permit complies with County policies and regulations, and whether it poses a detriment to the public health, safety and welfare. When a permit is granted, the operator is subject to all conditions, and requirements of the permit and all County ordinance requirements whether the operator is the original applicant or a subsequent permit holder.

Economic Viability and Project Abandonment: Concerns were raised regarding the long-term economic viability of the proposed cannabis project, and the nature of cleanup in the event of project failure or abandonment.

Staff Response: Economic viability is not an assessment criterion of the county. The regulatory system does not choose who is able to participate in the marketplace, the regulatory system establishes the regulations for those who choose to participate.

The CCLUO requires permit holders to return the site to pre-cannabis conditions upon termination of the permit. This involves removal of all infrastructure not associated with another permitted use of the site. The Planning and Building Department has been working with applicants who are withdrawing from the industry to appropriately restore their sites.

Housing: Concerns were raised regarding the lack of available housing in Petrolia for outside workers. Letters indicate that there had been instances of individuals sleeping in cars and defecating in bushes

prior to the introduction of public portable toilets in Petrolia.

Staff Response: The applicant anticipates employing workers from the general area and proposes to include housing for eight full time employees on site. Approval of this permit does not authorize any violation of Humboldt County Code (i.e., public defecation, sleeping in cars, etc.). The eight units represent 75% of the housing needed to full time annual workers. The 4 other employees can come from the local work force as this will represent full time employment. Temporary workers will need to commute to the property.

Odor: Concerns were raised regarding odor impacts.

Staff Response: Pursuant to requirements of the CCLUO, cultivation activities are more than 300 feet from the nearest off-site residence. The majority of nearby residences are over 600 feet from proposed project activities. Size of the parcel, distance to sensitive receptors, and topography would reduce odors from cannabis cultivation.

Wildlife: Concerns were raised regarding impacts on wildlife in the area.

Staff Response: Naiad Biological Consulting conducted a Biological Reconnaissance and Project Feasibility Assessment Report consisting of literature reviews and field observations and studies to identify potential sensitive biological resources that may occur within the Project area. In an initial assessment, a potential wetland feature was identified; however, the current proposal has all project related infrastructure and operations located approximately 0.45 miles from the potential wetland area, with several discrete geologic formations separating operations from the feature. An updated assessment was prepared to reflect the current proposal, which found no wetlands within or near the proposed project location. A Botanical Survey was also conducted, with key findings from the updated assessment and Botanical Survey summarized below:

- *Special Status Species: A review of available literature indicates that 4 special status plant species and 5 special status animal species have a moderate or higher potential to occur within the Project area. Evidence of presence of American badger was detected on site; however, the species was not observed. Mitigation measures, including American badger surveys, have been included as recommended conditions of approval, and a Botanical Survey was conducted by Naiad Biological Consulting during appropriate seasons for detection, and although Monterey cypress was observed, it was believed to be a planted ornamental and will not be impacted by cannabis operations.*
- *Designated Critical Habitat: The Project areas do not contain designated critical habitat for any listed species.*
- *Sensitive Natural Communities: No sensitive natural communities were identified within the Project area.*
- *Wetland and Riparian Habitats: A potential wetland area was identified approximately 0.45 miles southeast of the proposed project location. Due to the distance between the potential wetland and the project site, the potential wetland will not be disrupted by Project activities. No wetland areas were identified within 100 feet of proposed project locations.*

- *Wildlife Movement Corridors: After a review of Essential Habitat Connections identified in the California Essential Habitat Connectivity Project, no significant wildlife movement corridors were identified within the Project area.*

Biological mitigation measures include:

- Preconstruction surveys for American badgers (*Taxidea taxus*) shall be conducted prior to any ground disturbance or construction in the Proposed Project area. Surveys shall be conducted by a qualified biologist no more than one week prior to ground disturbance. If active badger dens are determined to be present, badger relocation to other onsite suitable habitat shall occur in coordination with CDFW.*
- For all construction-related activities that take place within the nesting season, accepted as February 1 through August 31, a preconstruction nesting-bird survey for migratory birds, including Cooper's hawk (*Accipiter cooperii*) and Golden eagle (*Accipitridae chrysaetos*), shall be conducted by a qualified biologist no more than two weeks prior to construction within the Proposed Project area and a buffer zone determined by the qualified biologist, depending on the species nesting. The timing of surveys shall be determined in coordination with the CDFW. If active nests are found, a no-disturbance buffer zone shall be established, the size of which the biologist shall determine based on nest location and species. Within this buffer zone, no construction shall take place until the young have fledged or until the biologist determines that the nest is no longer active.*

The subject property is also involved in the Mattole and Salmon Creek Forest Health and Fire Resilience Project, which includes proposals for removal of invasive species, manual tree planting, and fuel breaks.

FINANCIAL IMPACT:

There will be no additional effect on the General Fund.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by its support of the Goals and Policies of of stabilizing and supporting a successful cannabis industry.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose to approve the appeal and deny the application or could choose to approve a modified version of the requested entitlement. If one of these options is chosen, it is recommended that the item be continued to allow preparation of appropriate documentation of the Board's action.

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

- A. Conditions of Approval
 - B. Mitigation Monitoring Report
 - C. Cultivation Operation Plan
 - D. Site Plan
- 2. Appeal filed by Petrolia Chambers Road residents and landowners, contact person Dan Berger
 - 3. Planning Commission Staff Report
 - 4. Resolution of the Planning Commission, Resolution No. 22- ____
 - 5. Public Comments submitted to the Planning Commission
 - 6. Public Comments submitted during CEQA circulation period
 - 7. Draft Initial Study and mitigated Negative Declaration
 - 8. Comments Received after Planning Commission Deadline
 - 9. Alternative Access Route

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A