

Ogulin Hills Holdings, LLC
637 Lindaro Street - Suite 201
San Rafael, CA 94901

January 3, 2022

Honorable Mayor and Clearlake City Council Members
City of Clearlake
Clearlake City Hall
14050 Olympic Drive
Clearlake, CA 95422
C/O Mr. Alan Flora - Clearlake City Manager

Re: Rebuttal to David Hughes Appeal - Ogulin Hills Holdings, LLC - Conditional Use Permits for Commercial Cannabis Operations - UP 2021- 05, 06, 07, 08, 09 and CEQA Initial Study - IS 2021-02 2185 Ogulin Canyon Road APN 010-044-17

Honorable Mayor and City Council Members:

On Tuesday November 9, 2021, the City of Clearlake Planning Commission considered and approved the Conditional Use Permit applications for the proposed cannabis facilities at 2185 Ogulin Canyon Road, with the following determinations (reformatted):

1. The applicant applied for approval of Cannabis Business Use Permits for cultivation, manufacturing, retail delivery, and distribution on the property located at 2185 Ogulin Canyon Road, Clearlake, CA, in the I, Industrial, and CB, Commercial Cannabis Business Zoning Districts,
2. Cannabis Business Use Permit Applications UP 2021-05 through UP 2021-09 have been made in accordance with Section 18-43, Commercial Cannabis of the Municipal Code, which refers to Commercial Cannabis Uses.
3. A companion application for a Development Agreement has been filed for commercial cannabis operations at the same location.
4. The CEQA Initial Study identified potentially significant adverse effects in the areas of air quality, biological resources, hazardous materials, and noise.
5. Mitigation measures that avoid the effects or mitigate the effects to a point where clearly no significant effects would occur have been identified through the Initial Study (applicant has agreed to all mitigation measures in accordance with CEQA).
6. A Mitigation Monitoring and Reporting Program has been prepared in accordance with City of Clearlake Environmental Review Guidelines and related regulations and is designed to ensure compliance during Project implementation.
7. The City determined that the mitigation proposed in the Mitigation Monitoring and Reporting Program would reduce the impacts to a less than significant level and a Mitigated Negative Declaration (MND) was prepared.
8. The City distributed a Notice of Intent (NOI) to Adopt a Mitigated Negative Declaration for the Project on June 30, 2021, which started a 30-day public review period, ending August 6, 2021. The NOI was posted at the Lake County Clerk / Recorder's office, distributed through the State

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Clearinghouse, posted at City offices, and mailed to Project stakeholders, property owners, and residents within a 600 foot radius of the Project.

9. The City received four written comments within the 30-day public review period.
10. The City responded to all comments by preparing a final initial study and mitigated negative declaration, and the Planning Commission staff report, that adequately address these comments and found these documents adequate to complying with the CEQA, the City's Environmental Review Guidelines and related regulations.
11. The proposed project is consistent with the General Plan which designates the Project site as Industrial.
12. In accordance with Section 18-28.040 of the Zoning Code the use as proposed will not be detrimental to the health, safety or welfare of persons working or living at the site or within the vicinity.
13. The Planning Commission has considered this Project on this date at a duly noticed public hearing, the staff report, public testimony, and found that the project is compatible with the surrounding area, it will not be detrimental to adjacent property owners or the public at large, and approval is in the public interest.

Based on the City staff recommendation, the Planning Commission voted to approve the project subject to conditions, and adopted the following findings:

A. Adoption of the Mitigated Negative Declaration

1. The Planning Commission finds that the Mitigated Negative Declaration was presented to the Planning Commission, that the Planning Commission has reviewed the Mitigated Negative Declaration prepared for the 2185 Ogulin Canyon Road Commercial Cannabis Business Use Permit (the "Project"), all staff reports pertaining to the Project and all comments received there on, and that the Mitigated Negative Declaration has been prepared and completed in compliance with the California Environmental Quality Act (CEQA).
2. The Planning Commission finds that on the basis of the Mitigated Negative Declaration, comments received, and the whole record that there is no substantial evidence that the Project will have a significant adverse impact individually or cumulatively on the environment.
3. The Planning Commission finds that the Mitigated Negative Declaration reflects the City's independent judgment and analysis.

B. Adoption of the Mitigation Monitoring and Reporting Program

1. The Planning Commission hereby recommends to the City Council adoption of the Mitigation Monitoring and Reporting Program, as attached to the Project staff report.
2. The Planning Commission hereby recommends to the City Council that the proposed mitigation measures described in the Mitigated Negative Declaration are feasible and therefore become binding upon the City and its construction contractors.

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The 21.25-acre parcel, located at 2185 Ogulin Canyon Road, was previously owned by the City of Clearlake and was proposed to be the location of the new City yard and animal shelter. The City determined the land was not a suitable location for the yard and put the land up for sale. The applicant bought the property from the City.

The project site is accessible from a gated driveway on the north side of Ogulin Canyon Road. The existing driveway terminates at the top of the hill where the parking area and three new buildings will be constructed. A secondary access road extends to the west where the greenhouses will be constructed.

The project is anticipated to have up to ten employees during typical operations and up to twenty-five employees during harvest.

The Conditional Use Permit application and supporting documentation submitted to the City is extensive and has involved input and work performed by several professionals, including:

- Site Plans and Preliminary Grading Plans - Civil Engineer
- Floor Plans and Elevations - Building Designer
- Application Documents, Water Availability Report, and other documents - Planning Consultant
- Groundwater Hydrology Technical Memorandums - Water Resource Engineer
- Traffic Report - Traffic Engineer
- Cultural Resources Report - Archeologist
- Biology Report – Biologist

Appeal Issues

Even though there was no opposition or public comments made regarding the project at the November 9th Planning Commission hearing, the Clearlake Zoning Ordinance allows anyone to appeal a decision of the Planning Commission. However, there are questions about the justification for the appeal. It is also curious as to why the appellant has not disclosed that he was the listing real estate broker when the City of Clearlake sold the property to the applicant.

In addition to the required application documentation and plans, in June of 2021 (upon request by City staff) the applicant prepared and submitted a water use report titled - **2185 Ogulin Canyon Road Water Availability Analysis - June 2021 by Richard Knoll Consulting.**

In November of 2021, pursuant to a follow up request from City officials, the applicant hired a water resource engineer to prepare and submit a ground water report titled - **Technical Memorandum - Ground Water Hydrology – 2185 Ogulin Canyon Road, Clearlake, CA by Northpoint Consulting Group Inc. - Annjanette Dodd, PhD - CA PE #77756 November 9, 2021.**

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Although not initially required as part of the Conditional Use Permit application, the need for these water reports was understood and agreed to by the applicant, who then prepared and submitted them to the City prior to the Planning Commission hearing on November 9, 2021.

In the November 15, 2021 appeal, the appellant states that some of the Burns Valley property owners feel their wells were impacted by nearby vineyards and other cannabis projects.

Response: There is a lack of factual detail and clarity in the appeal statement regarding water wells in the Burns Valley Basin. After the appeal was filed, the applicant reached out numerous times to the appellant to request details about specific water well issues in the referenced Burns Valley Basin. Unfortunately, detailed information about the well problems has not been made available. This makes it difficult to address the concerns being expressed and brings into question the validity of the implied impacts.

The 2185 Ogulin Canyon Road project is not affiliated with any vineyards or existing developed cannabis cultivation projects. The applicant is involved in three nearby, proposed, undeveloped projects in the area including - Blue Oak Farms, Lake Vista Farms, and 2160 Ogulin Canyon Road.

The appellant also states that the cumulative effect of adding this project to the existing uses should be considered prior to approval of the use permit.

Response: The **Technical Memorandum - Ground Water Hydrology – 2185 Ogulin Canyon Road, Clearlake, CA by Northpoint Consulting Group Inc.** was prepared, submitted to, and considered by the Planning Commission prior to their decision on November 9, 2021. The conclusion of this **Technical Memorandum** is **“Since there is sufficient recharge and supply to meet the project’s demand during average and dry years; the project’s demand is only 0.1% of the usable storage capacity of the Burns Valley Groundwater Basin; and the potential future cannabis demand in the basin is a fraction of the usable storage capacity. Thus, the proposed project water use would have little to no cumulative impact on the surrounding area.”**

A follow up report on groundwater hydrology, prepared in response to the appeal, is titled - **Technical Memorandum - Response to Appeal Comments - 2185 Ogulin Canyon Road (APN 010-044-17) by Northpoint Consulting Group, Inc. Annjanette Dodd PhD, CA PE #77756 - Dated 12-29-21.** This Memorandum provides the following summary and discussion on pages 5 and 6:

- *A Groundwater Hydrology Technical Memorandum was prepared for 2185 Ogulin Canyon Road on November 9, 2021 and submitted to the Planning Commission that addressed groundwater recharge and cumulative impacts and concluded that there is sufficient recharge and supply to meet the project’s demand during average and dry years; the project’s demand is only 0.1% of the usable storage capacity of the Burns Valley Groundwater Basin (BVGB); and the potential*

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future cannabis demand in the basin is a fraction of the usable storage capacity of the BVGB and that the proposed project water use would have little to no cumulative impact on the surrounding area.

- *The existing demand associated with vineyards and orchards is likely higher than reported in the 2006 Lake County Groundwater Management Plan. The higher estimate has been incorporated herein.*
- *The main sources of groundwater in the BVGB are within the Quaternary Alluvium Formation and the Lower Lake Formation. The Quaternary Alluvium dominates the southwestern portion of the BVGB, where both residential development and well development are most dense. The alluvium has a thickness of up to 50 feet; groundwater in this formation is unconfined and typically provides water for domestic use. Wells screened in unconfined aquifers are more directly influenced by lack of rain than those screened in deeper, confined aquifers.*
- *The Lower Lake Formation underlies the alluvial deposits in the BVGB. This formation has low permeability and provides water to wells at up to a few hundred gallons per minute and is the dominant source of agricultural water demand in the BVGB.*
- *Long-term groundwater monitoring in the BVGB shows a stable trend in groundwater levels within the deeper formation, with consistent recharge during each annual wet season, even during years with low annual precipitation and accounting for the existing vineyard and orchard demand that has occurred over this time.*
- *Although there has been anecdotal evidence of wells going dry in the BVGB, no information regarding these wells was provided so that they could be adequately assessed. It is likely these wells are located in the shallower alluvium formation and are more directly influenced by lack of rain and the low water levels in Clear Lake. No wells within the BVGB were reported to the State Water Supply Shortage Reporting System. Additional monitoring and reporting within the Quaternary Alluvium are recommended and would be helpful in understanding shallow groundwater trends in the basin.*
- *The existing vineyards and the existing and proposed cannabis projects are located outside of the alluvial valley in the upper half of the BVGB.*
- *The dominant demand in the BVGB is associated with residential development and orchards in the lower part of BVGB and vineyards in the upper part of the BVGB. The Highlands Mutual Water Company supplies the majority of residents in the lower part of the BVGB using surface water drawn from Clear Lake. Thus, agriculture accounts for the majority of groundwater demand. The agriculture demand, accounting for existing agriculture and potential cannabis projects, is approximately 661.6 acre-feet per year. The estimated storage capacity of the BVGB is 4,000 AF, with a usable storage capacity of 1,400 AF. The total potential agricultural demand is 47% of the usable storage capacity. Thus, there is sufficient storage capacity to meet existing and proposed demand.*
- *Recharge estimates provided in the Hydrology Reports for 1756 Ogulin Canyon Road (Blue Oak*

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Farms), 2050 Ogulin Canyon Road (Lake Vista Farms), 2160 Ogulin Canyon Road, and 2185 Ogulin Canyon Road, demonstrate that there is sufficient recharge over each project's contributing recharge area (a small fraction of the entire Burns Valley Watershed area) to meet each project's demands during both average and dry years.

- *Overall, the proposed projects represent 2.6% of the usable storage capacity in the BVGB and only 6.7% of the existing demand for irrigation of existing vineyards and orchards.*
- The demand associated with 2185 Ogulin Canyon Road represents only a small fraction, 0.1% of the usable storage capacity of the BVGB, only 0.3% of the total potential future demand in the BVGB, the total demand associated with the proposed cannabis projects in the BVGB is only 2.6% of the usable storage capacity of the BVGB and 6% of the potential future demand in the BVGB. Thus, it is unlikely that these projects, in combination with the 2185 Ogulin Canyon Road project, will adversely impact wells in the lower portion of the BVGB.

The applicant has had follow up discussions with Clearlake City Staff and the City Manager regarding the water well issues referenced in the appeal. The applicant also reached out to several public agencies and a community water provider including: the City of Clearlake Building Department; Highlands Water Company; and the Lake County Environmental Health Department in an attempt to identify and define the Burns Valley Basin well water issues.

The applicant also reviewed the Clearlake General Plan - Land Use and Public Facilities Elements to ascertain if there are City policies in place with regard to the Burns Valley Basin water issues.

Conclusion

There is no evidence presented by the appellant that the cannabis facilities project at 2185 Ogulin Canyon Road will impact downstream water wells.

Both Technical Memorandums regarding the groundwater hydrology prepared for the 2185 Ogulin Canyon Road Project confirm that there is sufficient groundwater storage capacity to meet existing and proposed demand.

Recharge estimates for the site at 2185 Ogulin Canyon Road demonstrate that there is sufficient recharge over the project's contributing recharge area (a small fraction of the entire Burns Valley Watershed area) to meet the Projects' demands during both average and dry years.

The demand associated with the 2185 Ogulin Canyon Road Project represents only a small fraction of the total potential future demand. Thus, it is unlikely that this Project will adversely impact wells in the lower portion of the Burns Valley Groundwater Basin.

We respectfully request that the City Council consider the facts, respect the diligence and work put into this project by the applicant, by City staff, and by the Planning Commission, deny the appeal, confirm

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the staff recommendations, and uphold the decision of the Planning Commission to approve the Conditional Use Permits.

Thank you.

Brian Pensack

Brian Pensack - Managing Partner
Ogulin Hills Holdings, LLC

Attachments:

Technical Memorandum - Ground Water Hydrology – 2185 Ogulin Canyon Road, Clearlake, CA by Northpoint Consulting Group Inc. - Annjanette Dodd, PhD - CA PE #77756 November 9, 2021.

Technical Memorandum - Response to Appeal Comments - 2185 Ogulin Canyon Road (APN 010-044-17) by Northpoint Consulting Group, Inc. Annjanette Dodd PhD, CA PE #77756 - 12-29-21.

PowerPoint Presentation – Applicant’s Appeal Rebuttal - Clearlake City Council dated January 6, 2022.