



STAFF REPORT	
SUBJECT: Consideration of Appeal (AP 2021-04) of the Planning Commission's approval of Conditional Use Permit Applications (CUP 2021-05 through 08) and approval of the corresponding Mitigated Negative Declaration (IS 2021-02); for commercial cannabis operations located at 2185 Ogulin Canyon Road (Ogulin Hills, LLC)	MEETING DATE: 01/06/2022
SUBMITTED BY: Mark Roberts, Senior Planner	
PURPOSE OF REPORT: <input type="checkbox"/> Information only <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to consider Appeal Application, AP 2021-04 appealing the Planning Commission's approval of Conditional Use Permit Applications CUP 2021-05 through 08 and Corresponding Mitigated Negative Declaration (IS 2021-02). The Commercial Cannabis Operation is located at 2185 Ogulin Canyon Road, further described as assessor parcel number 010-044-17.

BACKGROUND/DISCUSSION:**Planning Commission Summary:**

On November 9, 2021, Conditional Use Permit Applications CUP 2021-05 through 08, corresponding Environmental Assessment/Mitigated Negative Declaration (IS 2021-02), and Development Agreement (DA 2021-04), to establish a Commercial Cannabis Facility, was brought before the Planning Commission for consideration. Below is a summary of each Conditional Use Permit: (*Refer to Attachment 3 -Planning Commission Staff Report Packet dated 11/9/2021 for full details*).

- **CUP 2021-05 (Manufacturing):** Is the compounding, blending, extracting, infusing, or otherwise making or preparing and packaging the cannabis product.
- **CUP 2021-06 (Cannabis Cultivation/Processing):** Is the germinating, cloning, seed production, planting, growing and harvesting cannabis plants. It may also include on-site drying, curing, grading, or trimming of cannabis plants, as well as the processing of raw cannabis plants for the purpose of manufacturing, distribution and retail delivery.
- **CUP 2021-07 (Distribution):** Is the procuring of cannabis plants from permitted cannabis cultivation sites and/or cannabis manufacturers for sale to permitted cannabis dispensaries and the inspection, quality assurance, batch testing by a Type 8 licensee, storage, labeling, packaging, and other processes prior to permitted medical cannabis dispensaries.
- **CUP 2021-08 (Retail Dispensary; Delivery Only):** Is the commercial transfer of cannabis or cannabis products from a licensed or permitted dispensary to a customer. "Delivery" also includes the use by a licensed or permitted dispensary of any technology platform owned or accessed via software license that enables the consumer to arrange for or facilitate the commercial transfer of cannabis by a licensed dispensary or retailer of cannabis or cannabis products. Note: the facility will not be open to the public.
- **Development Agreement, DA 2021-04:** The project also includes Planning Commission review and recommendation on a Development Agreement as required by the Zoning Code.
- **Mitigated Negative Declaration Initial Study IS 2021-02:** Pursuant to California Environmental Quality Act (CEQA) Guidelines; staff prepared an Initial Study to assess the potential adverse environmental effects

of the proposed project, and all potential impacts have been reduced to less than significant levels with the incorporated mitigation measures. *(Refer to Attachment 3 -Planning Commission Staff Report Packet dated 11/9/2021 for full details).*

A Notice of Intent (NOI) document was circulated to various Federal, State and local agencies, including the surrounding parcel owners within 600 feet of the project parcel. The NOI gives those notified the opportunity to review and comment on the proposed CEQA determination during the 30 days circulation period. The city received the following comments *(All comments/concerns have been incorporated as Mitigation Measures and/or Conditions of Approval).*

- *The city did not receive any adverse comments or concerns from the General Public.*
- *Lake County Air Quality Management District dated March 20, 2021*
- *Lake County Fire Protection District Comments dated March 29, 2021*
- *Lake County Environmental Health Department Comments dated March 11, 2021*
- *Central Valley Regional Water Quality Control Board dated August 6, 2021*
- *Department of Cannabis Control Comments dated August 10, 2021*

During the public hearing, staff and the applicant's representative provided presentations of the proposed cannabis operation, including a "Technical Memorandum (dated 11/9/2021)" from Northpoint Consulting Group, Inc on Groundwater Hydrology. The Technical Memorandum provided a summary analysis of the Burns Valley Groundwater Basin, including but not limited to: *[Refer to Attachment 4 for details).*

- *Estimated Water usage.*
- *Overview of the Burns Valley Groundwater Basin, including numbers of wells within the area*
- *Recharge rate*
- *How the Burns Valley Groundwater Basin has not been identified by the California Department of Water Resources (DWR) as critically over drafted basins.*
- *Proposed water usage will have little to no cumulative impacts on the surrounding area.*

Upon reviewing all materials, including no public concerns being brought before the Planning Commission during the hearing *(please note: Only the applicant and their representative's attended the meeting)*, the Planning Commission approved the project.

Appeal Application Submitted

On November 15, 2021, an Appeal Application was submitted *(appeal was filed within the required time frame)* appealing the Planning Commission's approval of the project as noted above. According to the submitted Appeal Application Packet, the stated reasoning for the appeal is based on water availability within the area. *(Refer to Attachment 1 for full details).*

OPTIONS:

1. Move to Adopt Resolution CC 2022-03, A Resolution of the City Council of the City of Clearlake denying Appeal Application AP 2021-04, and upholding the Planning Commission's approval of Conditional Use Permits Applications CUP 2021-05, through CUP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration (Initial Study, IS 2021-02) and Development Agreement, DA 2021-04 for the operation of a commercial cannabis operation based on the finding that the proposed use would be established and maintained without jeopardy to persons or property within or adjacent to the proposed site and without damage to the resources of the site and its surroundings, as required by Zoning Code Section 18-28.060.
2. Move to Adopt Resolution CC 2022-03, A Resolution of the of the City Council of Clearlake approving Appeal Application, AP 2021-04 revoking the Planning Commission approval of Conditional Use Permit Applications CUP 2021-05, through CUP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration IS 2021-02 and Development Agreement, DA 2021-04 for the operation of a commercial cannabis operation based on the finding that the proposed use would not be established and maintained without jeopardy to persons or property within or adjacent to the proposed site and without damage to the resources of the site and its surroundings, as required by Zoning Code Section 18-28.060.

3. Provide alternate direction to Staff

RECOMMENDATION:

Staff's review of the appeal request does not identify any specific information that would indicate a significant impact on the environment which has not been already addressed in the adopted mitigated negative declaration.

1. Move to Adopt Resolution CC 2022-03, A Resolution of the City Council of the City of Clearlake denying Appeal Application AP 2021-04, and upholding the Planning Commission's approval of Conditional Use Permits Applications CUP 2021-05, through CUP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration (Initial Study, IS 2021-02) and Development Agreement, DA 2021-04 for the operation of a commercial cannabis operation based on the finding that the proposed use would be established and maintained without jeopardy to persons or property within or adjacent to the proposed site and without damage to the resources of the site and its surroundings, as required by Zoning Code Section 18-28.060.

☒ **Attachments:**

- 1) Appeal AP, 2021-04 Application Packet dated 11/15/2021
- 2) Ogulin Canyon LLC - Rebuttal to Appeal
- 3) Planning Commission Staff Report Packet dated 11/9/2021
- 4) Northpoint Consulting Group - Groundwater Hydrology dated 11/9/2021
- 5) Resolution CC 2022-03 (*Part of City Council Staff Report*)

Attachment 5: Resolution CC 2022-03

Option 1 Resolution: Deny Appeal and uphold Planning Commission Decision on Approval of Conditional Use Permits

RESOLUTION No. CC 2022-03

A Resolution of the City Council of the City of Clearlake Denying Appeal Application AP 2021-04, and upholding the Planning Commission approval of Conditional Use Permit Applications CUP 2021-05, through UP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration IS 2021-02 and Development Agreement, DA 2021-04 located at 2185 Ogulin Canyon Road, further described as Assessor Parcel Number (APN) 010-044-17 when located in the "I" Industrial and "CB" Cannabis Business Zoning Districts

WHEREAS, applicant **Ogulin Canyon Holdings, LLC.**, applied for approval of an Conditional Use Permit Applications CUP 2021-05, through UP 2021-08, corresponding environmental assessment and Mitigated Negative Declaration IS 2021-02 and Development Agreement, DA 2021-04 for the operation of a commercial cannabis operation located at **2185 Ogulin Canyon Road; APN: 010-044-17** in the "I" Industrial and "CB" Cannabis Business Zoning Districts in accordance with Section Sections 18-28 (Use Permits) and 18-41 (Cannabis) of the Zoning Code; and

WHEREAS, **Appeal Application AP 2021-04**, filed by Dave Hughes contesting the determination of the Planning Commission approval on November 9, 2021 of Conditional Use Permit Applications CUP 2021-05, through UP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration IS 2021-02 and Development Agreement, DA 2021-04 was **denied** by the City Council at a duly noticed public hearing at the regularly scheduled meeting on January 6, 2021, by a roll call vote; and **upheld the approval** of Conditional Use Permit Applications CUP 2021-05, through UP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration IS 2021-02 and Development Agreement, DA 2021-04, and,

WHEREAS, this application, filed by Dave Hughes, AP 2021-04 appealing the decision of the Planning Commission approval decision of Conditional Use Permit Applications CUP 2021-05, through UP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration IS 2021-02 and Development Agreement, DA 2021-04, complies with Section 18-36 (Appeals) of the Zoning Code; and

WHEREAS, the City Council has considered this project, the staff report, public testimony, on this date (**January 6, 2021**) at a duly noticed public hearing, and found that the project is compatible with the surrounding area, and will not be detrimental to adjacent property owners or the public at large, and approval of the Administrative Use Permit is in the public interest; and

WHEREAS, the appeal and conditional use permit application has been processed in accordance with the City's Environmental Review Guidelines; and

WHEREAS, adequate public noticing was made for the project in accordance with Section 18-28.030 the Municipal Code; and

WHEREAS, in accordance with Sections 18-28 (Use Permits) and 18-41 (Cannabis) of the Zoning Code the use as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or injurious to the property, improvements or potential development in the vicinity with respect to aspects including, but not limited to, the following:

- a) The nature of the proposed site, including its size and shape, and the proposed size, shape, and arrangement of structures,
- b) The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic and the adequacy of proposed off-street parking and loading, safeguards afforded to prevent noxious or offensive emissions such as noise, glare, odor, and dust.
- c) Treatment given, as appropriate, to such aspects as landscaping, open spaces, parking areas, loading areas, service areas, lighting, and signs; and

WHEREAS, based on certain conditions of approval, the project does comply with the Clearlake Zoning Code.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Clearlake that Appeal Application AP 2021-04 contesting the Planning Commission's decision on November 9, 2021, is hereby **denied** and Conditional Use Permit Applications CUP 2021-05, through UP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration IS 2021-02 and Development Agreement, DA 2021-04 is approved.

PASSED AND ADOPTED on this 6th day of January 2021 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Dirk Slooten, Mayor

ATTEST:

Melissa Swanson, City Clerk

Option 2 Resolution: Approve Appeal and overturn Planning Commission Decision

RESOLUTION No. CC 2022-03

A Resolution of the City Council of the City of Clearlake Approving Appeal Application AP 2021-04, revoking the Planning Commission approval of Conditional Use Permit Applications CUP 2021-05, through UP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration IS 2021-02 and Development Agreement, DA 2021-04 located at 2185 Ogulin Canyon Road, further described as Assessor Parcel Number (APN) 010-044-17 when located in the "I" Industrial and "CB" Cannabis Business Zoning Districts

WHEREAS, applicant **Ogulin Canyon Holdings, LLC.**, applied for approval of an Conditional Use Permit Applications CUP 2021-05, through UP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration IS 2021-02 and Development Agreement, DA 2021-04 for the operation of a commercial cannabis operation located at **2185 Ogulin Canyon Road; APN: 010-044-17** in the "I" Industrial and "CB" Cannabis Business Zoning Districts in accordance Sections 18-28 (Use Permits) and 18-41 (Cannabis) of the Zoning Code; and

WHEREAS, Appeal Application AP 2021-04, filed by Dave Hughes contesting the determination of the Planning Commission approval of Conditional Use Permit Applications CUP 2021-05, through UP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration IS 2021-02 and Development Agreement, DA 2021-04 was **approved** by the City Council at a duly noticed public hearing at the regularly scheduled meeting on **January 6, 2021**, by a roll call vote; and revoked the approval of Conditional Use Permit Applications CUP 2021-05, through UP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration IS 2021-02 and Development Agreement, DA 2021-04, and,

WHEREAS, appeal application, AP 2021-04 filed by **Dave Hughes**, appealing the decision of the Planning Commission approval of Conditional Use Permit Applications CUP 2021-05, through UP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration IS 2021-02 and Development Agreement, DA 2021-04, complies with Section 18-36 (Appeals) of the Zoning Code; and

WHEREAS, the City Council has considered this project, the staff report, public testimony, on this date (**January 6, 2021**) at a duly noticed public hearing, and found that the project is not compatible with the surrounding area, and will be detrimental to adjacent property owners or the public at large, and approval of the Conditional Use Permit is not in the public interest; and

WHEREAS, the appeal and conditional use permit application has been processed in accordance with the City's Environmental Review Guidelines; and

WHEREAS, adequate public noticing was made for the project in accordance with Section 18-28.030 the Municipal Code; and

WHEREAS, in accordance with Sections 18-28 (Use Permits) and 18-41 (Cannabis) of the Zoning Code the use as proposed will be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or injurious to the property, improvements or potential development in the vicinity with respect to aspects including, but not limited to the following:

- d) The nature of the proposed site, including its size and shape, and the proposed size, shape, and arrangement of structures,
- e) The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic and the adequacy of proposed off-street parking and loading.
- f) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, odor, and dust.
- g) Treatment given, as appropriate, to such aspects as landscaping, open spaces, parking areas, loading areas, service areas, lighting, and signs; and

WHEREAS, based on certain conditions of approval, the project does not comply with the Clearlake Zoning Code.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Clearlake that Appeal Application AP 2021-04 contesting the Planning Commission's decision on November 9, 2021, is hereby approved and Conditional Use Permit Applications CUP 2021-05, through CUP 2021-08, corresponding environmental assessment/Mitigated Negative Declaration IS 2021-02 and Development Agreement, DA 2021-04 is revoked.

PASSED AND ADOPTED on this 6th day of January 2021 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Dirk Slooten, Mayor

ATTEST:

Melissa Swanson, City Clerk