



## Huerfano County Board of County Commissioners Staff Report– Marijuana Cultivation License ML-24-001- Focus Buds

Meeting Date June 25, 2024

### **Application Summary:**

Focus Buds is applying for a Retail Marijuana Cultivation License to cultivate marijuana on a property with existing facilities, including a greenhouse, hoop house and water storage tanks. The property was used to grow hemp between 2017-2019, but due to market conditions, has been unused since 2019. The 107.85-acre property (parcel no. 395593) is zoned Agricultural and located adjacent to the Spanish Peaks Village subdivision, and just north of the County-owned Rio Cucharas Inn. Access to the property is off County Road 504.

The property is owned by Blue Sky Farms, a CBD company that has two properties in Huerfano County. Blue Sky Farms is leasing the property to Focus Buds, a new company formed for the purpose of the proposed operation.

### **Project Narrative:**

Focus Buds proposes to grow retail marijuana in an existing facility formerly used to grow hemp. The site has a greenhouse, a hoop house, water storage cisterns, a trimming room and two shipping containers for storage. The operation anticipates growing two to three indoor crops per year in the greenhouse and hoop house located on the property. The anticipated size of the crop will be around 1,000 producing plants and will employ six full-time-equivalent employees, including two full-time growers, two permanent trimmer positions at 30-hours/week, and three part-time positions for accounting and marketing. Pharouk Hussein, who owns 51% of Focus Buds, and Joel Hough, who resides in the County and is currently taking care of both of Blue Sky Farms' properties will be employed, contributing to the 51% local labor requirements.

All cultivation will take place indoors. In the greenhouse, a hydroponic system will be used; in the hoop house, crops will be grown in grow boxes. Carbon filters will be used to mitigate odors from the facility. During harvest times the filtration system will be augmented with an additional portable filtration system. The facility has over 20,000 gallons of water storage capacity and will rely on hauled water from Ojo Springs Drilling and Well Service. There is a residential well located on the property, but it is not operational and cannot be used for Cannabis operations.

Focus Buds is a participant in a state social equity program for minority-owned business. This enhances eligibility for grants, helps to expedite and reduce fees with the state licensing process. Based on initial revenue projections the applicant anticipates that roughly \$35,775 will be paid to the County in excise taxes in the first year of operations.

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### **Security:**

Security cameras and lighting are to be installed around all entrances, exits to structures, including shipping containers.

### **Comprehensive Plan Compliance:**

The 2018 Huerfano County Comprehensive Plan has several elements that pertain to this application. Including:

#### **Land Use and Growth:**

**LG 1.1:** Strive to maintain low impact agricultural uses in the County.

**LG 1.2** Accommodate residential, commercial and industrial land uses in the County.

**LG 2.1:** Ensure that new development under the jurisdiction of the County is appropriately located with adequate access to utilities and services.

#### **Economic Development:**

**ED 2.1:** Require commercial and industrial development and uses to occur in locations that will benefit the County and minimize land use conflicts.

**ED 5.4:** Repurpose existing major private and public facilities which are currently unused or underutilized.

#### **Water Resources:**

**WR 1.4** Applicants should avoid reliance on “Haul” water for which a firm contract for a specific amount of water over a specified period of time has not been entered into with the water provider.

#### **Code of the West -- Agriculture:**

1. It is possible that adjoining agriculture uses can disturb your peace and quiet.

6: ...If you choose to live among the farms and ranches of our rural countryside, do not expect County government to intervene in the normal day-to-day operations of your agribusiness neighbors.

### **Impacts and Mitigation:**

Odor: All proposed cultivation will be indoors, and air filtration systems installed on both the greenhouse and hoop house. The applicant stated that when the facility was in operation for the production of hemp from 2017-2019, no complaints from neighbors were received. Hemp and marijuana have similar impacts in terms of odor.

MSDS sheets: Alcohol Wipes, Antibiotic ointment, CO2 Safety, Clorox regular bleach, Essential, everyday ammonia cleaner, Advanced Nutrients Bud Ignitor

Traffic generated will consist of up to three employees. Often not all three will be present on site at the same time. If all three are present and leave for a lunch break, it would generate 12 trips per day on CR 504.

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Lighting: MED regulations require that security cameras be capable of identifying activity and individuals occurring within 20 feet of all points of ingress and egress. Outdoor lighting will be designed to balance requirements of dark skies regulations with MED security needs. The lighting plan submitted with this application includes the following measures:

1. Shield all fixtures over 175-watts
2. Limit pole-mounted light to under 25-feet
3. Design and locate lights to prevent objectionable light at and across property lines and to prevent glare at any location on or off the property
4. Light not to exceed 5 foot-candles and directed at designated areas.

Indoor lighting: During the vegetative stage of growth, plants require up to 18-hours of light per day, while during the flowering stage, they require 12-hours of light per day. When days are short, such as during the winter, indoor lighting will be used. To prevent this from causing disruptive light pollution, the following measures will be taken to prevent indoor light from being visible outside the greenhouses:

1. Light abatement screens
2. Vertical, retractable light-restricting screens
3. Specialized overhead screens

Water: Water for this project will be hauled from Ojo Springs Drilling and Well Service and stored in cisterns on site. The Division of Water Resources has submitted a letter for this case, WDID 1670001, affirming the legal source of water, in which disapproval of the application based solely on its ability to operate using a legal source of water is *not* recommended.

### **Completeness:**

Submittal requirements are laid out in Section 5.01 of the Marijuana Ordinance. All required documents have been submitted with this application.

All structures are required to have certificates of occupancy. Huerfano County records show that a final inspection was conducted, but no record of a certificate of occupancy could be found. A re-inspection of the property was conducted on June 5, 2024 and a certificate of occupancy is pending electrical, plumbing and gas finals. There is an un-permitted hoop house on the property approximately 100ft x 30ft. To come into compliance, the applicant must apply for a building permit, have the structure inspected and address any issues that may be identified. There are also two un-permitted shipping containers. To come into compliance, applicant must apply for a conditional use permit for shipping containers. There is also a camper that shows signs of being lived in and for which no camping permit has been issued. If the camper is being lived in for more than 7 consecutive days or more than 30 days in a 12-month period, a camping permit needs to be obtained.

### **Location:**

**Context:** Located to the west of Spanish Peaks Village and just over 2,500 ft. south of the southwest portion of Rio Cucharas Phase 1. The property is separated from Rio Cucharas Phase 1 by two adjacent properties on the northern property line belonging to the Bar Spear Ranch and Mountain

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Lake Ministries. To the west and south of the property is a parcel owned by Michael Baudendistel, and to the south, the property is adjacent to the Rio Cucharas Inn, owned by the County. The property adjacent to the Rio Cucharas Inn, owned by Rhonda Jean Shafer, is part of the Spanish Peaks Village subdivision. The property also has a frontage and access on CR 504.

The facility is located in the northwest corner of the parcel. The closest properties to the facility are the property owned by Michael Blaudendistel and the Bar Spear Ranch. Both of these properties are agriculturally zoned and contain neither any dwellings or structures.

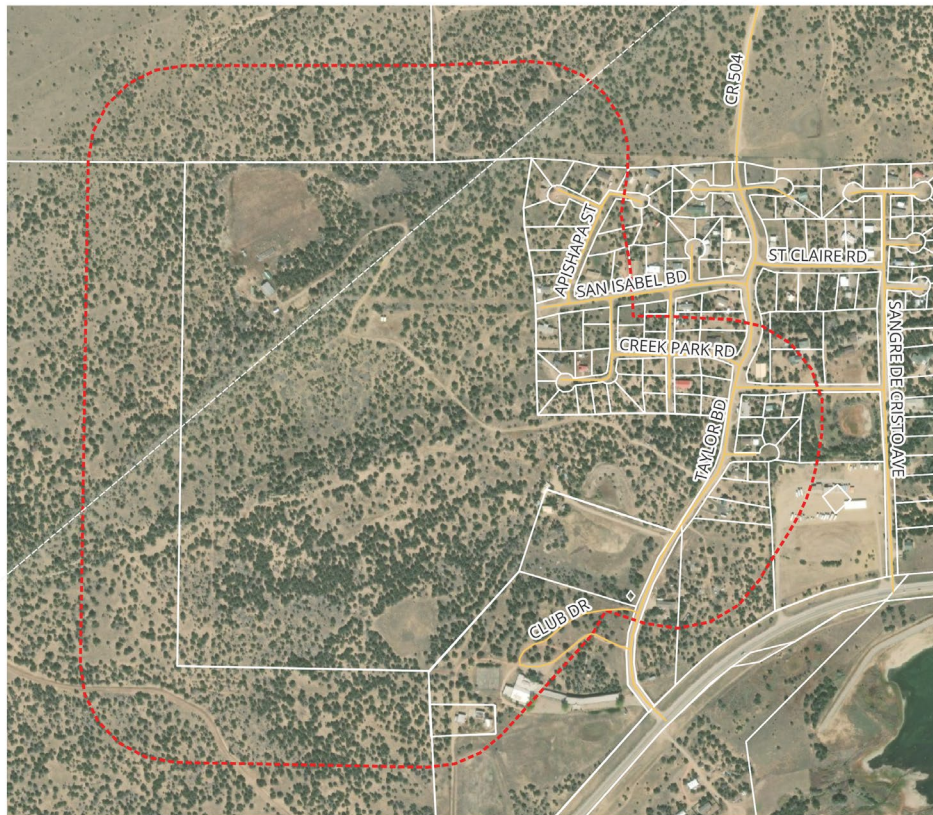
There is a dyke running NE/SW across the property that creates a visual separation between the facility and neighbors to the south and east (see dashed white line on vicinity map). The dyke running across the property blocks the view of the facility from adjacent properties. Below is a photo taken from the entrance to the property from CR 504: the facility is on the other side of the dyke, which appears as a ridge in the photo below, and which is marked with a white dashed line in the vicinity map below (Figure 2).



*Figure 1: From front gate, dyke is visible in the background.*

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*Figure 2: Vicinity Map: Red dashed line shows 500 ft. buffer around property; white dashed line shows location of dyke that bisects property. Facility is located in the northwest corner of property.*

**Location criteria established in Ordinance 23-001:**

1.08.01 No License may be issued to operate a Medical or Retail Marijuana Cultivation Facility in a Residential zone district, or operate a medical or retail marijuana store, manufacturing facility or testing facility as a "home occupation" under the Huerfano County Zoning Regulations.

- The proposed project is zoned agricultural and is not a home occupation.

1.08.02 When the Local Licensing Authority has reason for concern that an adjacent use may not be compatible with the proposed use, a statement of no opposition from adjacent property owners may be requested by certified mail to addresses listed with the Assessor, which shall include a description of the scope of the project to be licensed, information on where application materials can be found for review, and how to respond. If no response is received within 30 days, it shall be considered a de facto statement of no opposition.

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- Adjacent uses to the north and west are vacant agriculturally zoned parcels. To the east is the Spanish Peaks Village subdivision. To the South is the Rio Cucharas Inn property owned by the County.

1.08.03 Proposed new cultivation facilities located within three miles (3) of a municipality boundary shall have an extraterritorial commercial water tap from said community. An approved contract with the municipality for said water tap must be included in the application at the time of the initial submittal or the application shall not be accepted. The water line must be permanently installed from the municipality to the facility prior to the issuing of a Certificate of Occupancy.

- Property is approximately 4.4 miles from the Walsenburg City Limits.

1.08.04 Any new cultivation facilities located more than three miles (3) of a municipality must demonstrate a physical, legal source of water approved by a Division 2 Engineer from the Colorado Division of Water Resources. Documentation of this requirement must be included in the application at the time of the initial submittal, or the application shall not be accepted.

- See letter from DWR and contract with Ojo Springs Drilling and Well Service.

1.08.05 All applications for commercial marijuana cultivation shall be sent to the Colorado Division of Water Resources, the appropriate Fire District, the Huerfano County Sheriff Department, and any other agency determined necessary by the Licensing Authority for review. Any comments by these agencies should be returned to County Staff within twenty-one (21) days of receipt of the application.

- Review agencies notified on 5/1/2024: Huerfano County Road and Bridge, San Isabel Electric, Las Animas-Huerfano County Health Department, Huerfano County Sheriff, Huerfano County Noxious Weed Manager, Huerfano County Assessor, Huerfano County Finance, Huerfano County Treasurer, Huerfano County Soil Conservation District and the Huerfano County Fire Protection District. There were no comments/concerns received by the above mentioned referral agencies.

1.08.06 No license for retail or medical marijuana stores will be issued within three (3) miles of a municipality boundary.

- N/A – this is for a cultivation license.

1.08.07 Retail or medical marijuana stores, testing facilities and infused products manufacturers not located in a Commercial or Industrial zoning district and not operating as a dual operation with a cultivation facility shall have a water supply provided by a municipal or communal water utility.

- N/A – this is for a cultivation license.

### **Nuisance considerations:**

**Noise:** No part of proposed operations presents a potential source of noise.

**Dust:** Proposed operations will not create dust.

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**Odors:** Both the greenhouse and hoop house will be equipped with air filters. During harvest times, a portable filter will be used in addition to installed filter system.

**Light:** See lighting plan. Outdoor lights will comply with Dark Skies ordinance. During the vegetative phase of growth, grow lights will be used to extend days to up to 18 hours of light. Light from inside greenhouses will be shielded to limit impact.

**Hours of Operation:** 8am - 8pm

**Traffic:** Up to four on-site employees: 8-16 personal vehicle trips per day on CR 504.\

### Criteria for approval:

**6.01.01** Before approving a local license, the Authority shall determine that all of the following requirements have been met by the Applicant:

- (1) The appropriate application is complete and the full application, license and operating fees have been paid;
- (2) The Land Use Department has determined that the use is permitted at the Location of the Premises and the owner or operator has obtained any required approvals under the Huerfano County Land Use Regulations;
- (3) No zoning violations exist on the Premises;
- (4) All proposed signs meet the requirements of the Huerfano County Land Use Regulations;
- (5) All proposed lighting meets the Huerfano County Land Use Regulations;
- (6) Any structure in which a licensed use is located has been inspected by the Huerfano County Building Official, Building Inspector or designee, complies with all applicable Building Regulation provisions and these regulations, and all necessary building permits have been obtained;
- (7) The Premises complies with all applicable Land Use regulations including, but not limited to, driveway, grading, and setback regulations;
- (8) The Premises has all required well or water and sanitation system permits or is adequately served by public water and/or sewer;
- (9) Evidence of a legal and adequate water supply has been established;
- (10) The Premises is not subject to unresolved enforcement action by the Las Animas – Huerfano County Health Department; The Premises complies with the applicable Fire Code;
- (11) All personal property tax schedules related to the Premises are submitted timely and are complete;
- (12) All property taxes have been paid and no tax liens exist on the Premises;
- (13) All Huerfano County sales taxes have been timely reported and paid;
- (14) All Huerfano County retail marijuana cultivation facility excise taxes have been timely reported and paid;
- (15) The applicant and Premises are in compliance with all other applicable County regulations;
- (16) The application, including any required attachments and submissions, does not contain a material falsehood or misrepresentation; and
- (17) The proposed Licensed Premises are located in a Location permitted by these Regulations.
- (18) Protests from nearby residents or HOA/POAs will be considered as a potential justification for denial.
- (19) Demonstration of eligibility to receive a state license of the same type for the same activity at

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the same Location to the satisfaction of the Local Licensing Authority.

**Staff Comment:** This application addresses each aspect of the marijuana licensing ordinance requirements and includes measures to mitigate anticipated nuisances. If no additional issues that require mitigation are identified during the public hearing, staff recommends approval of this application.

Potential conditions to consider:

- Applicant must obtain a building permit and certificate of completion for the hoop house.
- Applicant must obtain a conditional use permit for the shipping containers.
- If the camper on site is to be lived in for more than seven consecutive days or 30 days in a year, a camping permit must be obtained.

Board of County Commissioners Decision:

On June 11, 2024 the Board of County Commissioners decided to continue this application until the next meeting once further information was gathered by the Land Use Staff. The following

- Emergency contact information posed on gate- finished once license is obtained
- In compliance with MED at all times as in ordinance- once land use license is approved
- Actual specifications on filters- working on putting specifications together to submit to MED and the Land Use Department
- Camper on premises- applied and paid for camping permit, possibly temporary building to be a break room (will need to follow 2021 IBC building code)
- Certificate of Occupancy- Building Department staff is working on completing
- Building permit for hoop house- in progress, application has been applied for and paid

**The BOCC may take the following actions on this application:**

1. **Approval** without any special conditions.
2. **Conditional Approval** with a description of the special conditions.
3. **Denial**, indicating for the record the reason(s) for such action.
4. **Continuation** until a future date to gather more information or obtain clarification or for any other relevant cause.

**Attachments:**

- 1) County Application
- 2) Deed
- 3) Surety Bond
- 4) CO2 monitor controller
- 5) CO2 Regulator Instructions
- 6) Drainage Plan
  - a) Odor Control
  - b) Utilities



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- 7) Wastewater Plan
- 8) Division of Water Resources Approval Letter
- 9) Lease
- 10) Facility Diagrams
- 11) Site Plan/survey
- 12) Additional Diagram
  - a) Site plan – aerial photo with labels
  - b) Greenhouse engineered foundation
  - c) Site photo: RV as bathroom breakroom, septic tanks
  - d) Site photo: greenhouse, shipping containers
- 13) Lighting Plan
- 14) Background Check Release: Francisco Bautista
- 15) Background Check Release: Pharouk Hussein
- 16) Indemnification Waiver: Francisco Bautista
- 17) Indemnification Waiver: Pharouk Hussein
- 18) Properties within 500 ft.
- 19) MSDS: Alcohol Wipes
- 20) MSDS: Antibiotic ointment
- 21) MSDS: CO2 Safety
- 22) MSDS: Clorox regular bleach
- 23) MSDS: Essential, everyday ammonia cleaner
- 24) MSDS: Advanced Nutrients Bud Ignitor
- 25) Property Taxes and Employee Projections
- 26) MED License information
- 27) Public Comment Letter