



# PLANNING AND BUILDING DEPARTMENT

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TO: Board of Supervisors Agenda of: October 22, 2024

FROM: Evan Mattes, Sr. Planner Legistar No.: 24-1732

RE: CCUP-A24-0003 and CCUP-A24-0004 Appeal of CCUP21-0008 Archon

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### **Recommendation**

Based on the analysis of CCUP-A24-0003 and CCUP-A24-0004, staff recommends the Board of Supervisors take the following actions:

- 1) Deny both appeals, CCUP-A24-0003 and CCUP-A24-0004, and uphold the approval of Archon Commercial Cannabis Use Permit CCUP21-0008, based on the Findings and subject to the Conditions of Approval as approved by the Planning Commission; and
- 2) Adopt and Authorize the Chair to sign Resolution XXX-2024 (Attachment E), denying appeals CCUP-A24-0003 and CCUP-A24-0004 and adopting Findings of Fact.

### **Alternative Actions**

1. Approve both appeals and overturn the approval of CCUP21-0008 Archon, with direction to staff to return the Findings of Denial based upon Board of Supervisor direction; or
2. Approve appeal CCUP-A24-0003, deny appeal CCUP-A24-0004, and overturn the approval of CCUP21-0008 Archon, with direction to staff to return the Findings of Denial based upon Board of Supervisor direction; or
3. Approve appeal CCUP-A24-0004, deny CCUP-A24-0003, and overturn the approval of CCUP21-0008 Archon, with direction to staff to return the Findings of Denial based upon Board of Supervisor direction.

### **Project Description**

The proposed project would include the construction and operation of a mixed light and outdoor cannabis cultivation facility (also referred to as the cannabis cultivation premises or premises) that would include approximately 10,000 square feet of flowering mixed-light cannabis canopy and 17,640 square feet of immature nursery cultivation in a fenced, designated cannabis cultivation area; a water well and tank for irrigation and storage; storage structures; parking spaces; and compost area.

Both immature and mature cannabis would be grown in raised beds and fabric pots and would use drip irrigation. The six (6) proposed greenhouses would be roughly eight feet tall and would

be used for cultivation of up to 10,000 square feet of mature cannabis cultivation, while immature plants would be grown in a 17,640-square foot designated nursery area (Figure 4, all figures are included in Appendix A of Exhibit J). The project would cultivate one (1) harvest cycle per year. Cultivation soil beds would be tilled seasonally. The cannabis would be sun grown from seed to maturity on the premises, with a plan to eventually use six (6) greenhouses for mature plant cultivation and harvest on-site. The mature plants would be transported to an off-site, third-party licensed manufacturing facility for trimming, packaging, and processing.

Construction would take place in two (2) phases. The first phase would establish the outdoor growing area, while the second phase would convert the outdoor mature cannabis cultivation area to greenhouses. Hoop houses may be used during phase one, but the hoop houses would be for light deprivation and would not include supplementary lighting. During both phases, the nursery area would be outdoors.

### **Project History**

CCUP21-0008 was heard by the Planning Commission on August 22, 2024. Public comment was received on the project, including concerns about water, setbacks, and project size. At the hearing Planning staff introduced a memo (Attachment G) correcting the project description and Condition of Approval No. 1. This was to correct errors and create consistency throughout the staff report. Commissioner Boeger made a motion to approve CCUP21-0008, with the amended project description and Condition of Approval No. 1. The motion failed 2-3. A second motion was made by Chair Nevis to continue the item to a date certain of September 12, 2024 to allow additional public review of the updated documents. This motion passed 5-0. The Planning Commission report documentation, and written comments are available here: [County of El Dorado - File #: 24-1431 \(legistar.com\)](#) (website defaults to Version 2, use dropdown to select Version 1) and the record of the public hearing is available here: [Planning Commission Meeting 8-22-2024 \(granicus.com\)](#). These are part of the record on appeal.

The continued project was heard by the Planning Commission on September 12, 2024. Public comment was received on the project, including statements of project support and concerns about water. Planning staff prepared and distributed a memo (Attachment F) on September 6, 2024 addressing Planning Commissioner concerns regarding applicable water/streambed permitting through various State and Federal agencies. A motion was made by Commissioner Boeger to approve CCUP21-0008. The motion passed 3-1 with one (1) absence. The Planning Commission report documentation, and written comments are available here: [County of El Dorado - File #: 24-1431 \(legistar.com\)](#) and the record of the public hearing is available here: [Planning Commission Meeting 9-12-2024 \(granicus.com\)](#). These are part of the record on appeal.

### **Appeal Filed**

On September 23, 2024, two (2) appeals were submitted:

Appeal CCUP-A24-0003 (Attachment A) was submitted in a timely manner by Judy Husak. As stated in the appeal, the appellant is specifically appealing the project based upon absence of agency reports, water usage, impact to water table, noncompliance with El Dorado County Ordinance 5111, violation of the California Environmental Quality Act (CEQA), lack of

notification, noncompliance with the General Plan and Zoning Ordinance and other impact violations. The appeal also included a statement of opposition with a petition of denial for a different, previously approved Commercial Cannabis Use Permit (CCUP21-0002/Harde).

Appeal CCUP-A24-0004 (Attachment B) was submitted in a timely manner by Leslie Schoenfeld. As stated in the appeal, the appellant is specifically appealing the Stream Bed Alteration Agreement waiver, Water Protection Risk Level, and Wetland Definition.

### **Appeal CCUP-A24-0003 Judy Husak**

#### *1. Agency Reports Absent*

*Staff Response:* The appellant asserts that “required reports from multiple agencies are non-existent and need to be included prior to approval”. The appellant does not specify which reports are missing from which agencies. As stated in the staff memo (Attachment F), dated September 6, 2024, the project was distributed to various State and Federal agencies, as part of standard agency review and CEQA agency review. No reports have been identified as missing. As part of State licensing requirements, additional approvals or clearances are required from State agencies, such as California Department of Fish and Wildlife (CDFW), California Department of Water Resources (DWR) and California State Water Resources Control Board (SWRCB). Pursuant to Section 130.41.200.5.E, SWRCB water source approval is required prior to permitting a cannabis cultivation (Staff Report Finding 3.11, Attachment K). SWRCB does not typically have permitting or reporting authority over groundwater. SWRCB requires cannabis projects to submit their well log (well completion report) to Cal Cannabis as part of their cannabis cultivation application. The subject project has completed this requirement and has received SWRCB clearance. As the project is obtaining its water supply from a County inspected well and does not propose diversion or impounding of waters, no additional State agency clearance is required. SWRCB is a State agency over which El Dorado County does not have jurisdiction. This appeal does not provide a pathway to challenge a determination of a State agency.

#### *2. Water Use*

*Staff Response:* The appellant states that the water onsite has not been proven to be adequate for the proposed project. The project site contains a well permitted by the County Environmental Management Department (EMD). The water source has been reviewed and approved by CDFW, SWRCB, and DWR. The well is 480 feet deep and provides 10 gallons per minute. This well would provide the main water supply for the cannabis canopy and miscellaneous support and sanitary needs. The project is estimated to use approximately 159,000 gallons of water annually, while the typical single-family residence uses approximately 182,476.5 gallons annually. The project would demand less water than a single-family residence. There is no evidence that the project would deplete groundwater supplies.

#### *3. Water Table Impacts*

*Staff Response:* The appellant states that the project will impact the water table and that the water table is not sufficient for existing residents. Pursuant to DWR, the project is not located within an over drafted groundwater basin. Additionally, DWR keeps records of reported dry wells, the closest reported dry well to this site is located approximately eight (8) miles west. EMD keeps records of destroyed wells within the County. A typical reason for destroying wells is due to low performance. The closest destroyed well to this project is located approximately three (3) miles northwest (Attachment M). There is adequate water supply to irrigate the proposed project, and the proposed project would not introduce substantial impervious surfaces that would interfere with groundwater recharge in the area of the proposed project.

4. *Noncompliance with Ordinance No. 5111*

*Staff Response:* Ordinance No. 5111 is an ordinance addressing the retail sale, distribution, indoor cultivation, laboratory testing, and manufacturing of commercial cannabis. CCUP21-0008 is proposing an outdoor cannabis cultivation. The project will be cultivating cannabis within greenhouses, this is considered mixed-light cultivation and is governed by the outdoor cultivation standards. The project was reviewed and found consistent with the mixed-light outdoor cultivation standards of County Code. Ordinance No. 5111 is not applicable to this project.

5. *Violates CEQA*

*Staff Response:* The appellant does not state on what grounds or how the project violates CEQA. An Initial Study (Attachment J) was prepared and distributed for review and adopted by the Planning Commission. No significant unmitigated impacts were identified as part of the Initial Study.

6. *Lack of Notification*

*Staff Response:* The appellant states that the community was not notified of the discretionary project. The project was notified in compliance with the requirements of 130.51.050 of the El Dorado County Zoning Ordinance. Mailed notifications were sent to all property owners within 1,000 feet of the project parcel and a notice was published in the *Mountain Democrat*, a newspaper of general circulation. Though not required by ordinance, notification was also posted on the County Planning website, in addition to other posting requirements. The project was continued from the August 22, 2024 hearing to September 12, 2024 to allow for additional public review and comment.

7. *Noncompliance with Zoning and General Plan*

*Staff Response:* The appellant does not state what policies of the Zoning Ordinance and General Plan the project is inconsistent with. Planning staff reviewed the project for compliance with applicable policies of the Zoning Ordinance, including Chapter 130.41, and General Plan and found the project to be consistent. The Planning Commission adopted staff's Findings (Attachment K) that the project is consistent with applicable Zoning Ordinance and General Plan policies.

8. *Other Impacts and Violations*

*Staff Response:* The appellant states that they reserve the right to address other violations and non-mitigated impacts that were not addressed at the Planning Commission hearing. An appeal hearing is often open-ended; however, Planning staff can only provide analysis of the specific reasons stated in the appeal form.

**Appeal CCUP-A24-0004 Leslie Schoenfeld**

1. *Lake and Streambed Alteration Agreement Waiver*

*Staff Response:* The appellant states that CDFW's decision to waive a Lake and Streambed Alteration Agreement for the project was incorrect, as there is one (1) intermittent stream on the property, Cedar Creek, and two (2) potential drainages on the project parcel. A Lake and Streambed Alteration Agreement, or waiver, is required as part of the State requirements and is not required as part of the County's discretionary process. It is common for applicants to obtain the State approvals after local entitlements have been obtained. CDFW is a State agency over which the County does not have authority. As stated in the appeal, the closest intermittent stream is Cedar Creek which is located over 300 feet away as determined by a qualified professional. Section 130.41.200.5.C requires a minimum setback of 300 feet from upland wetland vegetation of a watercourse. Pursuant to Section 130.30.050.3.d, all ministerial development (such as a single-family residence) has a 25-foot setback from all riparian resources. The project, as proposed, meets the setback requirements from Cedar Creek. As defined in the Zoning Ordinance, setbacks for watercourses refers to intermittent streams, like Cedar Creek, and perennial. Intermittent streams are defined as normally flowing for at least 30 days after the last major rain of the season and dry the remainder of the year. Perennial streams are defined as being shown on the United States Geological Survey (USGS) 7.5 minute map series as a solid blue line or normally flowing year round. There are no perennial streams on the project parcel. Ephemeral streams, which have flowing water only during, and for a short duration after, precipitation events, do not have any setback requirements. CDFW found that the project will not substantially divert or obstruct the natural flow of a river, stream, or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit or dispose of debris, waste, or other material where it may pass into any river, stream, or lake. Planning staff does not believe that CDFW acted upon flawed information and that the project avoids impact to riparian resources. As stated previously the Lake and Streambed Alteration Agreement is not required prior to local discretionary entitlement approval. This appeal does not provide a pathway to challenge a determination of a State agency, such as CDFW or SWRCB.

2. *Water Protection Risk Level*

*Staff Response:* The appellant states that the SWRCB incorrectly assigned the project a water quality protection risk level of "low risk". The appellant states that the SWRCB determination that no portion of the disturbed area is located on a slope greater than 30 percent is inconsistent with the Area of Interest (AoI) as shown on the Soils Report. The AoI shown on the soils report represents the entire project parcel. The only soils on the property shown to have a slope greater than 30 percent is the Cohasset cobbly loam, 15 to 50 percent slopes (CoE). The CoE soils on the

property are located on the north side of the project access road and are outside of all project impact areas.

### 3. *Wetland Definition*

*Staff Report:* The appellant states that the wetland determination is questionable as it utilized California Forest Practice Rules, as opposed to DWR definition. A Biological Resources Assessment (BRA) prepared by G.O. Graening, Phd, California Registered Environmental Assessor and International Society of Arboriculture (ISA) Certified Arborist. The BRA utilized CalFire's, California Forest Practice Rules, which provides guidance in assessing environmental and biological resources within timberlands and is used extensively for CEQA analysis within timberlands. Timberland is a forest that can produce commercial wood products and is not reserved. The project site is located within a forest that is producing commercial wood products and is not reserved. The project site has been commercially logged in the past. The project was distributed to CalFire, CDFW and DWR, which took no exception. It is appropriate to utilize California Forest Practice Rules for assessing impacts on the project site.