

BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

In the Matter of the Appeal of)
David Hughes)
Project Applicant: Lake Vista Farms)
[AB 21-05])
_____)

FINDINGS OF FACT AND DECISION

These proceedings were commenced by virtue of an appeal of the Planning Commission's determination on November 18, 2021, to adopt a mitigated negative declaration and to approve a major use permit (UP 19-36), for commercial cannabis cultivation located at 2050 and 2122 Ogulin Canyon Road in Clearlake, California (hereinafter, the "Project").

A duly noticed public hearing on the appeal scheduled before this Board on April 12, 2022, continued to May 3, 2022, and completed on May 10, 2022. At that time, evidence, both oral and documentary, was presented. Based upon the evidence and applicable law, we find the following:

1. That the Lake County Planning Commission held a noticed public hearing on November 18, 2021, to consider the adoption of a mitigated negative declaration and a major use permit (UP 19-36). The Applicant requested approval of a Use Permit for commercial cannabis cultivation located 2050 and 2122 Ogulin Canyon Road, Clearlake, California, further described by Assessor Parcel Numbers 010-053-01 and 010-053-02. The project comprises a combined parcel area of approximately 302.4 acres and is zoned "RL" for Rural Lands and is located approximately one (1) mile east of the intersection of State Highway 53 and Ogulin Canyon Road. The project includes

a cluster of cultivation sites over contiguous parcels, which is allowed by the Lake County Zoning Ordinance. The proposed Project includes fifteen (15) A-Type 3 "outdoor" licenses for a total cultivation area of 18.75 acres. Each cultivation area would include temporary hoop houses, 2000 square feet in size. The proposed project also includes portable toilets, vegetative waste storage areas, 2500- gallon water storage tanks at each cultivation site, a 1.5 acre onsite nursery within an existing barn, chemical and fertilizer storage, and six-foot high security wire fencing.

2. That on November 18, 2021, the Planning Commission adopted Initial Study IS 19-56 and mitigated negative declaration and approved Major Use Permit UP 19-56.

3. That the Project Applicant is Lake Vista Farms, LLC.

4. That the Appellant is David Hughes who stated that his appeal was also on behalf of a number of residents within the Burns Valley Basin, who live nearby the Project location. The Appellant alleges that cannabis cultivation should not be allowed within 1000 feet of established setbacks and that further hydrological study should be done before allowing any additional agricultural use because of the impact to the Burns Valley Basin.

5. That the Board of Supervisors has conducted a de novo hearing in this matter as required by Section 58.34 of the Lake County Zoning Ordinance.

6. That the Appellant presented evidence, both documentary and testimonial in support of this appeal, including, but not limited to, testimony by Mr. Hughes, who presented the bases for his appeal. Several area residents testified, including Brandy Case, Barbara Christwitz, and Nick Lavakas, noting the history of sometimes "iffy" water availability from their wells and their concerns regarding the impacts to their water

availability should this Project be approved. Further evidence was presented in the form of a written review of an August 19, 2021 Technical Memorandum prepared by the Project Applicant. Said review was conducted by Matthew Earnshaw, a certified Hydro-Geologist with EBA Engineering, hydrology and water resource consultants. Mr. Earnshaw also provided testimony. Mr. Earnshaw testified the Project Applicant's geology is wrong as to the aquifer, the evaluation of cumulative impacts to nearby wells is not adequately addressed, and the pump testing is inadequate. Mr. Earnshaw stated that a potential issue existed in regard to the evaluation of this Project in terms of cumulative impacts, given the other cannabis cultivation sites in the area. Mr. Earnshaw stated that the evaluation of cumulative impacts conducted on behalf of the Project Applicant did not consider the proposed project along with the groundwater demands of nearby projects and other reasonably foreseeable projects in the area that could contribute cumulative impacts similar to those of the Project. Mr. Earnshaw stated that further aquifer testing was needed given the potential impacts to nearby wells. Mr. Earnshaw noted that long-duration pumping tests with corresponding groundwater elevation measurements did not appear to have been performed.

7. That the Project Applicants presented evidence both documentary and testimonial during these proceedings. In addition to the submittal of written analysis, Dr. Annje Dodd of Northpoint Consulting testified on behalf of the Project Applicant. Dr. Dodd is a licensed civil engineer with a Phd. in Civil and Environmental Engineering with an emphasis in Water Resources. Dr. Dodd testified that this Project is not asking for a new water demand; it is replacing a previously-existing water demand. The baseline of water use for this Project was established by the prior agricultural use of the

subject property for hops cultivation. This Project will not require the same level of water use; it will require approximately 42% less water. Dr. Dodd testified that the wells associated with this Project are deep and fairly productive. Dr. Dodd stated her professional opinion that the Project conforms to all County staff recommendations and is consistent with both the County General Plan and Article 51 of the Lake County Code. A consultant for the Project, Richard Knowl, also testified in support of the Project as did Brian Pensack, an owner of the Project, Mike Mitzel, and Garret Burdick. Attorney Brad Johnson provided his view of the applicable law and pertinent facts relating to this Board's decisionmaking in this matter, both verbally and in writing.

8. That the Community Development Department presented a power point, testimony and documentary evidence relevant to these proceedings including, but not limited to, a staff report dated May 3, 2022, with accompanying exhibits and attachments. The Department did not prepare its own hydrology analysis nor conduct a peer review of the analysis submitted by the Project Applicant.

9. That this Board finds, based on the evidence and facts presented in this matter that substantial evidence supports a fair argument that the Project may have a significant effect on the environment. Therefore, an Environmental Impact Report is necessary.

10. That, in light of the foregoing, this Board declines to adopt a mitigated negative declaration as to this Project based upon the Board's determination that substantial evidence exists that this Project may have a significant environmental impact. Despite the fact that the hydrological analysis of the Project Applicant may support a different conclusion, the expert opinion of Mr. Earnshaw supports a fair argument that this

Project may have a significant effect on the environment.. Evidence was presented in the form of expert opinion that the hydrological analysis prepared by the Applicant did not provide the level of detail necessary to understand the cumulative impacts of this Project over time, that the geology relied upon by the Applicant is wrong, and the impacts to nearby wells was not adequately addressed. Expert testimony noted the as-yet unknown potential cumulative impacts to nearby wells as a result of other cultivation already in the area and that the Applicant did not consider the proposed project with the groundwater demands of nearby projects and other reasonably foreseeable projects in the area that could contribute cumulative impacts similar to those of the Project.

11. That this Board has considered and incorporates by reference the Community Development staff memorandum and exhibits thereto submitted to this Board for the hearing, as well as other documentation submitted to this Board by the Appellant, the Project Applicant, and area residents.

12. Based upon all the foregoing and for the reasons set forth hereinabove, this Board grants the appeal of the Appellant David Hughes.

NOTICE TO APPELLANT: You are hereby given notice that the time within which any judicial review of the decision herein may be sought is governed by the provisions of the Code of Civil Procedure Section 1094.5.

Dated: _____

ATTEST: SUSAN PARKER
Clerk to the Board
of Supervisors

CHAIR, Board of Supervisors
APPROVED AS TO FORM:

By: _____
Deputy

ANITA L. GRANT
County Counsel