



# COUNTY OF HUMBOLDT

For the meeting of: 7/20/2023

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File #: 23-1029

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**To:** Planning Commission

**From:** Planning and Building Department

**Agenda Section:** Consent

**SUBJECT:**

Humboldt Spirit, Inc. Conditional Use Permit and Special Permit  
Assessor Parcel Number: 222-071-030  
Record No's.: PLN-12244-CUP  
Garberville area

A Conditional Use Permit for 30,000 square feet of existing outdoor light-deprivation cannabis cultivation. The proposed project includes relocation of eight historic cultivation areas into three cultivation areas. There is a 3,000-square-foot nursery to support on-site operations. The applicant estimates 264,825 gallons of water is required to meet annual needs. Water for irrigation is sourced from an existing 930,626-gallon off-stream rainwater catchment pond. Water is stored in the described pond and three hard tanks for a total capacity of 932,531 gallons. Drying will occur on-site within a proposed 2,000 SF structure, with other processing completed offsite. Electricity is provided by a propane generator and solar power. There will be up to three employees onsite. The application also includes a Special Permit as is required for development in the Streamside Management Area (SMA) for the realignment of native channels and restoration efforts within the SMA associated with the removal of cannabis cultivation and associated infrastructure.

**RECOMMENDATION(S):**

That the Planning Commission:

1. Adopt the resolution (Resolution 23-\_\_). (Attachment 1) which does the following:
  - a. Finds that the Planning Commission has considered the adopted Mitigated Negative Declaration (MND) prepared for the Commercial Medical Marijuana Land Use Ordinance, and considered the Addendum to the MND that was prepared for the Humboldt Spirit, Inc. project (Attachment 3); and
  - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
  - c. Approves the Conditional Use Permit and Special Permit subject to the recommended conditions of approval (Attachment 1A).

**DISCUSSION:**

**Project Location:**

The project is located in the Garberville area, on the east and west side of Oak Rock Road, approximately 0.55 miles east from the intersection of Oak Rock Road and Moody Road, on the property known as 161 Oak Rock Road.

**Present General Plan Land Use Designation:**

Residential Agriculture (RA40), 2017 General Plan, Density: 40 acres per unit, Slope Stability: Moderate Instability (2).

**Present Zoning:**

Agriculture Exclusive, Minimum building site area is 60 acres (AE-B-5(60)).

**Environmental Review:**

An Addendum to a previously adopted Mitigated Negative Declaration has been prepared for consideration per §15164 of the State CEQA Guidelines.

**State Appeal:**

Project is NOT appealable to the California Coastal Commission.

**Major concerns:**

None.

**Executive Summary:**

Humboldt Spirit, Inc., seeks approval of a Conditional Use Permit for an existing 30,000 square foot outdoor cultivation operation located on a on Assessor's Parcel Number (APN) 222-071-030, which is approximately 108 acres in size. The proposed project also includes a Special Permit for development within the Streamside Management Area (SMA) for the realignment of native channels and restoration efforts within the SMA associated with the removal of cannabis cultivation and associated infrastructure.

The subject parcel contains a compost toilet and a greywater system on the subject parcel. Until the compost toilet and greywater system or development of an Onsite Wastewater Treatment System OWTS are permitted through the Department of Environmental Health, the applicant is required to provide portable toilets and handwashing stations for employees. (**Condition of Approval B4**). Access to the property is minimized and there are locked gates to control unauthorized access. Greenhouses and accessory structures would be locked for security purposes.

**Cultivation and Nursery Space**

As noted above, the application is for 30,000 SF of existing outdoor cultivation and 3,000 SF of ancillary propagation. Based on the Cultivation Area Verification (Attachment 4J), 31,179 SF of cultivation was in existence prior to the CMMLUO environmental baseline date of January 1, 2016. Ancillary propagation associated with the operation occurs approximately 350 feet northwest of cultivation area A as noted on the applicants Site Plan (Attachment 1C). This equates to 10% of the

total cultivation area. A nursery space of 10% of the cultivation area is what planning division staff and the Planning Commission have found allowable in the past, which would be equivalent to a nursery space of 3,000 SF. The ancillary nursery space combined with the proposed cultivation amount totals 33,000 SF which is 1,821 SF of commercial cultivation activities more than the amount (31,179 SF) of commercial cultivation activity accredited to the site as verified by Staff. The parcel is over 5 acres in size, the portion of the property where cultivation occurs is zoned is zoned AE-B-5(60), and irrigation water is sourced from a non-diversionary water source. Since slopes of where the ancillary propagation is located is less than 15%, as calculated, using the elevation and distances provided within the Site Plan prepared by ETA Humboldt, as such, new cultivation could be considered on the subject parcel. In consideration of these requirements, additional SF for propagation space is supported by Planning staff.

**On Site Relocation:**

The project proposes onsite relocation of historic cultivation totaling 31,179 SF across eight (8) separate cultivation areas consolidating down to three (3) cultivation areas onsite “A” 20,020 SF, “B” 3,745 SF, and “C” 6,500 SF as depicted on the applicants Site Plan prepared by ETA Humboldt for a total cultivation area of 30,000 SF. According to the letter dated November 7, 2017, from Natural Resources Management Corporation, a portion of eight historic cultivation areas that are proposed to be relocated are within Streamside Management Areas (SMAs) (Attachment 4A). The proposed relocation areas are outside of all mapped SMA’s and identified wetland buffers on the site per the applicants Site Plan. A Botanical Study has been prepared for the subject site by ETA Humboldt, LLC submitted in July 2022 (Attachment 4B). In preparing this document, a qualified biologist and environmental scientist, Austin Theriault, performed comprehensive protocol level surveys for botanical, biological, water quality, and erosion control across the three (3) proposed disturbance areas (relocation areas). Site visits occurred on June 8, 2021, July 15, 2021, and May 13, 2022. Per the Report, there are thirteen plants of significance listed as rare or endangered and occurring in the Garberville Quadrangle as of May 2022. The Report concludes that while a total of 67 native and introduced plant taxa were identified, no rare or endangered plant or animal species were identified during any of the three site visits. A Grading and Erosion Control Plan has been prepared by Trinity Valley Consulting Engineers, Inc., (TVCE) which outlines the plans to regrade the proposed area associated with cultivation area “A” which has existing slopes ranging from 12% to 28.5% down to a slope of 3% (Attachment 4C). The plans describe a cut and fill amount of 6,090 cubic yards (cy).

The project is conditioned to provide a detailed remediation and restoration plan within 60 days of project approval, developed to address the impacts of cannabis cultivation occurring in the eight (8) historic cultivation locations including a monitoring and reporting schedule lasting a minimum of 2 years from the start of remediation work as described within the remediation and restoration plan (**Conditions of Approval A6**).

**Water Resources:**

Annual water use for the project is estimated at 264,825 gallons. Irrigation water is sourced from the 930,626-gallon off-stream pond. Water storage onsite consists of the pond plus three additional HDPE storage tanks totaling 1,905 gallons of additional storage bringing total existing storage to 932,531 gallons.

An assessment of the capture potential of the existing rainwater catchment pond was completed to determine if adequate water supply is and would continue to be available to serve the project. The rainfall for the project area in a significant drought year is approximately 38 inches, based on rainfall values from 2013 through 2022 as recorded by PRISM Climate Group. Impermeable surfaces such as roofs, driveways, etc. in general allow for about 623 gallons of rainwater catchment per 1,000 SF for every inch of rainfall or 0.623 gallons per 1 SF. For a conservative assessment, this general rule was utilized, based on the approximate surface area of the pond, and did not account for run-off from the surrounding topography. Based on information provided by ETA Humboldt, the pond has a radius of 60 feet which equates to a surface area of 11,304 SF. Based on the pond's surface area of 11,304 SF, and a drought year rainfall amount of 38 inches, the pond's potential capture amount totals approximately 267,611 gallons per year. The potential annual rainfall catchment amount (267,611 gallons) equates to approximately 100.01% of the annual water amount utilized by the project (264,825 gallons). Current water storage totals 932,531 gallons onsite which is 667,706 gallons (or 352%) above the anticipated annual water use. As proposed, Planning staff believes there is sufficient water capture and storage onsite even during drought rainfall years, to meet the needs of the project. This permit does not authorize the use of the point of diversion or spring for irrigation. Conditions of approval require the applicant to monitor water use from the pond and water storage tanks annually to demonstrate there is sufficient water available to meet operational needs (**Condition of Approval A16**).

The applicant has submitted an R-2 Soils Report and Correction prepared by Lindberg Geologic Consulting approved with conditions by the Humboldt County Building Division in March 2018 (Attachment 4D). The report reviewed the current pond conditions and evaluated the potential for the pond to be deepened to increase storage capacity. The report did not estimate the capacity of the pond. The report concludes that the current state and design of the pond was acceptably constructed, and if the recommendations included within the report are adhered to, this pond is not expected to contribute to, nor be subject to, any site-specific geologic hazards. Concern was raised about the stability of the steep and deep cut slopes when the pond is deepened in relation to the water table. Since March 2018, the pond has been measured for total capacity and it was found to have a total capacity of 930,626 gallons. As such the applicant no longer intends to deepen or regrade the pond, instead proposing to install an impermeable liner to aid in rainwater capture and retention. The correction made by Lindberg Geologic Consulting describes "A liner is, in our opinion, the best solution for a leaky pond in this setting" in reference to the water holding ability of the soils at the existing pond site. Due to the change in the project proposal, whereby no physical modification or grading is proposed for the pond in favor of lining the pond and retaining its current capacity, staff does not believe adherence to the conditions outlined by the Humboldt County Building Division are required.

The applicant has submitted a copy of their Lake or Streambed Alteration Agreement (LSAA) (No. EPIMS-HUM-22999-R1) (Attachment 4E) that describes an encroachment for water diversion from an unnamed tributary to Sproul Creek, in addition to multiple other encroachments with required corrective actions. This diversion is limited to domestic use only with seasonal diversion minimization requirements. The project is prohibited from use of the diversion for commercial cannabis irrigation activities and is conditioned to adhere to the seasonal diversion minimization requirements as described within the LSAA. (**Condition of approval A11**). The project was referred to the California

Department of Fish and Wildlife (CDFW) on May 31, 2018. CDFW responded on December 31, 2018. At that time, CDFW was requesting additional information, that conditions be added to the project, and recommending denial of the project. With the execution of the above-described LSAA, and recommended conditions of approval, CDFW concerns have been addressed, or are in the process of being addressed.

On May 6, 2019, the site was inspected through a routine inspection by representatives of the State Water Resources Control Board (SWRCB) a subsequent Inspection Report was created June 4, 2019, to describe the current conditions and note any additional concerns related to refuse and cultivation-related wastes previously observed during an inspection on January 21, 2015. It was noted that the roads, stream crossings, unstable features, and other erosional features had not been improved since 2015. The report provided recommendations including an update to the required Cleanup, Restoration, and Monitoring Plan (CRMP) to include assessment, remediation plans as needed, and implementation schedule for all watercourse crossing on the site, a wetland delineation performed by a qualified professional was also requested prior to development of the proposed cannabis cultivation area and was submitted in April of 2023, titled Aquatic Resources Delineation (Attachment 4I), prepared by Kyle Wear - Botanical Consultant. The report concludes that setbacks to aquatic resources are consistent with the Water Board 2015 Regional Order (RI-2015-0023) and the Humboldt County General Plan (Humboldt County 2017) or are the more conservative of the two. On November 4, 2021, the North Coast Regional Water Quality Control Board (NCRWQCB) issued a Cleanup and Abatement Order (COA) to the applicant in response to violations of the Water Quality Control Plan for the North Coast Region. The CAO Directive No. 1 required that the applicant submit the updated CRMP by March 15, 2022. The updated CRMP was submitted to the NCRWQCB on March 14, 2022, by ETA Humboldt, as amended with additional information submitted on May 4, 2022, by Timberland Resource Consultants. An updated CRMP for the property was ultimately approved by NCRWQCB on July 19, 2022 (Attachment 4G).

A Site Management Plan (SMP) was prepared for the site by Timberland Resource Consultants (WDID 1\_12CC407540) in September of 2021 (Attachment 4H), which details existing site conditions and remediation efforts needed to comply with the best practical treatment or control (BPTC) measures listed in Attachment A of the Cannabis General Order. A total of forty-six unique points were identified as requiring remediation, including ditch relief culvert installations, rocked rolling dip installations, culvert upgrades, watercourse realignment, waterbar installations, watercourse crossing decommissioning, removal of cultivation related wastes, invasive species removal, reseeding of disturbed areas, water meter installation, rock armor installation at pond overflow, and providing secondary containment for all liquid petroleum products, generators, and pumps. The project is conditioned to implement all remaining corrective actions detailed in the SMP to minimize any potential impacts associated with the project and minimize runoff into nearby SMAs (**Condition of Approval A.13**).

### **Biological Resources:**

The nearest Marbled Murrelet habitat is approximately 0.37 miles to the northeast. The Nearest Northern Spotted Owl activity center is located 1.29 miles south of the cultivation area with an observation on the adjacent parcel, approximately 0.55 miles southeast from the cultivation area.

Although the proposed project is for outdoor cultivation, the applicant is proposing to use artificial lighting in the three (3) 1,000-square-foot propagation greenhouses. Due to the proximity of the cultivation area to NSO habitat, a proposed condition of approval to this project would require the applicant to maintain generator and fan noise at or below 50 decibels at the edge of the clearing or 100 feet, whichever distance is closer. This will satisfy the auditory disturbance guidance prepared by the U.S. Fish and Wildlife (USFS), California Fish and Wildlife (CDFW) and Department Policy Statement No. 16-005 to minimize impacts to the Northern Spotted Owl and Marbled Murrelet. The use of supplemental lighting complying with dark-sky standards can adequately address any lighting impacts on NSO and so does not recommend the prohibition of supplemental lighting during the breeding season but is recommending a condition of approval be added to this permit that would prohibit the use of artificial light until the applicant can demonstrate compliance with these noise and light standards. There is one approved (mixed light) and three pending (outdoor) commercial cannabis applications within 1 mile of the NSO activity center, and, because the majority of the application only use artificial lighting for short durations, there is, therefore, no likelihood of cumulative impacts on this activity center from permitted commercial cannabis cultivation sites in the vicinity.

Noise and light attenuation measures are required for the project. The applicant does have a solar system, and conditions of approval require the applicant to submit an energy use plan that describes the power demand for the project that includes a description of what power is required for (e.g., propagation, cultivation, and processing) and how much power is required on a monthly and annual basis. The energy plan shall also include a description of the generator(s) used to meet the power demand and state how the size of the generator is reasonable based on the power demand. The generator(s) used to support operations shall not be larger than required to meet operational needs. The plan shall also describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026 (**Condition of Approval A7**). In addition, the project is conditioned to ensure the combination of background, generator and greenhouse fan, or other operational equipment created noise, meets the noise level threshold of a maximum of 50 decibels at the edge of the clearing or 100 feet, whichever distance is closer. Conformance will be evaluated using current auditory disturbance guidance prepared by the United States Fish and Wildlife Service (USFWS). (**Condition of Approval B1**). Additionally, the applicant is required to ensure all lighting meets International Dark Sky Association standards for Lighting Zone 0 and Lighting Zone 1, be fully shielded, and designed and installed to minimize off-site lighting. (**Condition of Approval B2**).

**Access:**

Access to the site is off Ranch Road, a privately maintained road that intersects with paved County-maintained public road (Sprowel Creek Road). The Humboldt County Department of Public Works requested a Road Evaluation Report for the privately maintained portion of the access road. A road evaluation report was not submitted by the applicant, however, a cannabis project located on the parcel directly to the south (APPS #12520/APN 222-071-014) was approved by the Planning Commission on September 5, 2019 (Attachment 4F). Using the road evaluation report prepared for APPS#12520, after the end of the County-maintained road, there is approximately 1 mile of privately-maintained road (Segment 3 of the Road Evaluation Report) that is applicant/owner of APN 222-071-14 has commenced improvements based on recommendations from the California Department of Fish and Wildlife and Regional Water Board permitting requirements related to the Sprowel Creek enforcement

effort.

Additional Conditions include requiring within one year from the permit effective date, the applicant shall take steps to form a Road Maintenance Association for the maintenance of the privately maintained portions of the access roads to the project site located on Assessor's Parcel Number (222-071-030). The necessary steps include sending notices to all road users of the requirement to form a Road Maintenance Association and conducting a meeting with the users of the road, especially those engaged in commercial cannabis activities to discuss formation of the Road Maintenance Association. The applicant shall provide evidence, including notice, meeting minutes, and the decision as to whether a Road Maintenance Association is being formed to show this effort. In the even the applicant is unable to coordinate formation of a Road Maintenance Association, the applicant shall pay fair-share cost for maintenance of the road to any road user engaged in maintaining the road (**Condition of Approval A10**).

#### **Geologic Suitability:**

The project parcel is mapped in the County GIS as high instability. The location of the proposed relocation sites "B" and "C" is mapped as primarily 15% slope or less while relocation site "A" is mapped depicting slopes between 15-30%. As proposed the project seeks to modify the existing slopes at cultivation area "A" which has existing slopes ranging from 12% to 28.5% down to a slope of 3% as detailed in the applicants Grading and Erosion Control Plan.

#### **Security and Safety:**

Access to the property is minimized and there are locked gates to control unauthorized access. Greenhouses and accessory structures would be locked for security purposes.

#### **Tribal Consultation:**

The project was referred to the Northwest Information Center (NWIC), the Bear River Band of Rohnerville Rancheria and the Sinkiyone Intertribal Wilderness Council. Both NWIC and the Bear River Band of Rohnerville Rancheria requested a cultural resources study. A Cultural Resource Investigation Report for Justin Baldwin, APN 222-071-030, was prepared by Roscoe and Associates. One archeologic site and four historic fruit trees were found on the subject parcel. The following conditions of approval are included for the project:

1. A Tribally approved cultural resources monitor shall be present for all ground-disturbing activities associated with the pending CMMLUO permit at this location, on APN 222-071-030 (**Condition of Approval A12**).
2. Additionally standard inadvertent discovery protocol which has been incorporated into the project as a condition of approval (**Informational Notes 3**).

The proposed relocation area described in the THPO response has been updated to adhere to these concerns by condensing the proposed cultivation and disturbed area from 1 acre to 20,020 SF to be

located more eastwardly from the original proposal location.

**Consistency with Humboldt County Board of Supervisors Resolution No. 18-43:**

Planning staff determined approval of this project is consistent with Humboldt County Board of Supervisors Resolution No. 18-43, which established a limit on the number of permits and acres which may be approved in each of the County's Planning Watersheds. The project site is located in the South Fork Eel Planning Watershed, which under Resolution 18-43 is limited to 730 permits and 251 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 302 permits and the total approved acres would be 68.29 acres of cultivation.

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies and all responding agencies have either responded with no comment or recommended approval or conditional approval. (Attachment 5)

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could elect to add or delete conditions of approval. The Planning Commission could deny approval if unable to make all the required findings. Staff has concluded the required findings in support of the proposal can be made. Consequently, staff does not recommend further consideration of these alternatives.

ATTACHMENTS:

1. Resolution
  - A. Conditions of Approval
  - B. Revised Operations Plan
  - C. Revised Site Plan
2. Location Map Set
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
  - A. Justification for Relocation
  - B. Botanical Study
  - C. Grading and Erosion Control Plan
  - D. Soils Report and Correction
  - E. Lake or Streambed Alteration Agreement
  - F. Road Evaluation Report
  - G. Approval of Cleanup, Restoration, and Monitoring Plan
  - H. Site Management Plan
  - I. Aquatic Resources Delineation
  - J. Cultivation Area Verification
5. Referral Agency Comments and Recommendations

Applicant

Humboldt Spirit, Inc.



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**File #:** 23-1029

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Please contact Rodney Yandell, Senior Planner, at [ryandell@co.humboldt.ca.us](mailto:ryandell@co.humboldt.ca.us) or 707-445-7541 if you have any questions about the scheduled item.