

**RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF HUMBOLDT**

Resolution Number 23-161

Record Number PLN-11892-CUP

Assessor's Parcel Numbers: 108-023-008

Resolution by the Board of Supervisors of the County of Humboldt certifying compliance with the California Environmental Quality Act, approving the Big River Farm LLC appeal, and conditionally approving Big River Farms, LLC, Conditional Use Permit and Special Permit.

WHEREAS, Big River Farm, LLC, submitted an application and evidence in support of approving a Conditional Use Permit for 22,000 square feet (sf) of outdoor cannabis cultivation and a Special Permit (SP) for a setback reduction to public lands on the adjacent parcel to the south, APN 108-022-006, which is owned by the Bureau of Land Management; and

WHEREAS, the County Planning Division has reviewed the submitted application and evidence and has referred the application and evidence to involved reviewing agencies for site inspections, comments and recommendations; and

WHEREAS, the County Planning Division, the lead agency, prepared an Addendum to the Final Mitigated Negative Declaration prepared for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) adopted by the Humboldt County Board of Supervisors on January 26, 2016. The proposed project as recommended without mixed-light cultivation does not present substantial changes that would require major revisions to the previous mitigated negative declaration. No new information of substantial importance that was not known and could not be known at the time was presented as described by §15162(c) of CEQA Guidelines; and

WHEREAS, Attachment 4 in the Planning Division staff report includes evidence in support of making all of the required findings for approving the proposed Conditional Use Permit and Special Permit (Record Number PLN-11892-CUP); and

WHEREAS, a public hearing was held on the matter before the Humboldt County Planning Commission on September 21, 2023, and the Planning Commission took the following actions:

1. Adopted Resolution 23-082, which did the following:
 - a. Found the requirements of the California Environmental Quality Act had been complied with. The project was found to be statutorily exempt from CEQA as it is a project that was not approved.
 - b. Found the proposed cannabis operation would be detrimental to the public health, safety and welfare and is in conflict with the General Plan.
 - c. Denied the Conditional Use Permit and Special Permit for Big River Farms, LLC based on upon findings and evidence.

WHEREAS, an appeal was timely filed on October 3, 2023, by SL Consulting Services on behalf of Big River Farm, LLC (Appellant) in accordance with the Appeal Procedures specified in Humboldt County Code §312-13 et seq; and

WHEREAS, The Humboldt County Board of Supervisors held a duly-noticed public hearing, *de-novo*, on December 5, 2023, and reviewed, considered, and discussed the application and appeal for the Conditional Use Permit and Special Permit; and reviewed and considered all public testimony and evidence presented at the hearing.

Now, THEREFORE BE IT RESOLVED, that the Board of Supervisors makes all the following findings:

1.	FINDING:		Project Description: A Conditional Use Permit (CUP) for Big River Farm, LLC to allow 22,000 square feet (SF) existing outdoor cannabis cultivation on a 90-acre parcel. The project is within 600 feet of public land and requires a Special Permit to reduce the setback to BLM public land. An approximately 1.1-acre area at the southern parcel line will be planted with trees under the guidance and review of a Registered Professional Forester to increase the buffer to publicly owned and managed lands, and to increase the habitat buffer. Cultivation occurs in six (6) greenhouses utilizing light deprivation to achieve two harvest cycles. Propagation occurs onsite in a 2,190 SF ancillary nursery. Irrigation water is sourced from a groundwater well, supplemented by rain catchment. The estimated annual irrigation water usage is 219,000-gal. (9.9 gal./SF/year). Water storage totals 86,600 gallons in hard tanks, and applicant has secured grant funding to install an additional 50,000-gal. of storage tanks for a total of approximately 138,700-gal. Processing such as drying and curing will occur onsite in an existing 30' x 40' garage attached to the 1,200 square foot residence, or in the existing 30' x 40' storage shed. All other processing such as trimming and packaging will occur offsite at a licensed facility. Power for the cultivation operation is provided by P.G.&E., and generators for emergency backup power. Five employees are anticipated to meet operational needs during peak season.
	EVIDENCE:	a)	Project File: PLN-11892-CUP
2.	FINDING:		CEQA. The requirements of the California Environmental Quality Act have been complied with. The Humboldt County Board of Supervisors has considered the Mitigated Negative Declaration (MND) prepared for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) adopted by the Humboldt County Board of Supervisors on January 26, 2016, and the site specific Addendum

		prepared for the project.
	EVIDENCE:	a) Addendum prepared for the proposed project.
		b) The proposed project does not present substantial changes that would require major revisions to the previous Mitigated Negative Declaration. No new information of substantial importance that was not known and could not be known at the time was presented as described by §15164 of CEQA Guidelines;
		c) A Water Resources Protection Plan was prepared by Six Rivers Construction and Consulting dated June 2017 showing compliance with the North Coast Regional Water Quality Control Board Order No. 2015-0023.
		d) A <i>Cultural Resources Investigation</i> (CRI) prepared by William Rich and Associates dated June 2018 demonstrating that the project will not have a direct or indirect impact on cultural resources.
		e) A <i>Lake and Streambed Alteration Agreement</i> (1600-2018-0086-R1) with CDFW for culvert improvements on the property.
		f) A Well Completion Report from the Humboldt County Health and Human Services for the groundwater well (Permit No. 17/18-1912).
		g) A study titled Hydrologic Isolation of Existing Well from Surface Waters, conducted by a licensed engineering geologist indicating the groundwater well used for cultivation is isolated from surface waters, wetlands, and nearby springs.
		FINDINGS FOR CONDITIONAL USE PERMIT AND SPECIAL PERMIT
3.	FINDING	The proposed development is in conformance with the County General Plan, Open Space Plan, and the Open Space Action Program.
	EVIDENCE	a) General agriculture is a use type permitted in the Timberland (T) land use designation of the portions of the property where the cannabis activities occur. The proposed cannabis cultivation, an agricultural product, is within land planned and zoned for agricultural purposes, consistent with the use of Open Space land for managed production of resources. The use of an agricultural parcel for commercial agriculture is consistent with the Open Space Plan and Open Space Action Program. Therefore, the project is consistent with and complimentary to the Open Space Plan and its Open Space

			Action Program.
4.	FINDING		The proposed development is consistent with the purposes of the existing Agriculture Exclusive (AE) and Timberland Production (TPZ) zone in which the site is located.
	EVIDENCE	a)	The Agriculture Exclusive (AE) and Timberland Production (TPZ) Zone is intended to be applied to areas of the County in which general agriculture is an allowable use.
		b)	All general agricultural uses are principally permitted in the AE and zone, and pre-existing cultivation is allowed within areas designated AE and TPZ.
		c)	The proposed project meets all required zoning setbacks and does not exceed the maximum ground coverage allowed under the AE and TPZ zone requirements.
5.	FINDING		The proposed development is consistent with the requirements of the CMMLUO Provisions of the Zoning Ordinance.
	EVIDENCE	a)	The CMMLUO allows between 10,000 square feet and one acre of existing cannabis cultivation to be permitted in areas zoned AE and TPZ with a Conditional Use Permit (HCC 314-55.4.8.2.2).
		b)	The parcel of land known as APN 108-023-008 is eligible for an unconditional certificate of compliance pursuant to Section 66499.35 of the Subdivision Map Act due to the issuance of a prior building permit (97-0791OB3).
		c)	Humboldt County Code section 314-55.4.8.2.2 allows cultivation of up to 43,560 square feet of outdoor and 22,000 square feet of mixed light cannabis cultivation on parcels larger than 5-acres subject to approval of a Conditional Use Permit and a determination that the cultivation was in existence prior to January 1, 2016. The proposed 22,000 square feet of existing outdoor cultivation is consistent with this and with the cultivation area verification prepared by the County.
		d)	The location of the cultivation complies with all setbacks required in Section 314-55.4.11.d. It is more than 30 feet from any property line and more than 600 feet from any school, church, or Tribal Cultural Resource.
		e)	The applicant has met all applicable application requirements of Humboldt County Code §314-55.4.10
		f)	The permit application was received on December 15, 2016.

		g)	The project is consistent with Department Policy Statement (DPS) 16-005, Regulation of Generator Noise in areas of Habitat or Potential Habitat for the Marbled Murrelet or the Northern Spotted Owl. This DPS limits generator noise to 50 decibels at 100 feet from the noise source or at the edge of habitat, whichever is more restrictive. The project has also been conditioned to restrict construction activities to the time periods outside the nesting bird season (February 15 to September 1) or conduct pre-construction surveys no earlier than three days prior to scheduled ground disturbing activities to determine presence of nesting birds.
		h)	Specific Conditions of Approval to address concerns regarding the Northern Spotted Owl were crafted in concert with the Bureau of Land Management and California Department of Fish and Wildlife. Both agencies expressed satisfaction with the conditions, which included relocation of the nearest cultivation greenhouse away from BLM land and sensitive receptors, stocking the area with 1.1 acres of timber, grid power to serve the project, limiting the project to outdoor cultivation only (no mixed light), and a prohibition on the use of rodenticides.
6.	FINDING		The cultivation of 22,000 square feet existing outdoor cannabis cultivation and the conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.
	EVIDENCE	a)	The site is located on privately maintained road that is developed to a category 4 equivalent standard.
		b)	The site is in a rural part of the County where the typical parcel size is over 40 acres and many of the land holdings are very large. The proposed cannabis will not be in a location where there is an established neighborhood or other sensitive receptor such as a school, church, public park or other use which may be sensitive to cannabis cultivation. Approving cultivation on this site and the other sites which have been approved or are in the application process will not change the character of the area due to the large parcel sizes and agricultural uses in the area.
		c)	Irrigation water will come from a from a permitted groundwater well (Permit No. 17/18-1912) that has been assessed by a licensed geologist for hydrologic isolation from surface waters and nearby wells and determined to be isolated. Any surface water features in the area likely drain to the Mattole River, which is an important resource for recreation and fisheries and accordingly is an important public trust resource. Additionally, the nearest watercourse is Jewett Creek, which

			supports Steelhead trout. Due to the lack of direct connection of the well to any surface waters in the area the use of the well will not be detrimental to these public trust resources.
		d)	The slope of the land where cannabis will be cultivated is less than 15%
		e)	Provisions have been made in the applicant's proposal to protect water quality and thus runoff to adjacent property and infiltration of water to groundwater resources will not be affected.
		f)	Specific Conditions of Approval to address concerns regarding the Northern Spotted Owl were crafted in concert with the Bureau of Land Management and California Department of Fish and Wildlife. Both agencies expressed satisfaction with the conditions, which included relocation of the nearest cultivation greenhouse away from BLM land and sensitive receptors, stocking the area with 1.1 acres of timber, grid power to serve the project, limiting the project to outdoor cultivation only (no mixed light), and a prohibition on the use of rodenticides. These conditions ensure the project will not have detrimental impacts on lands managed for open space and wildlife habitat.
7.	FINDING		The proposed development does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.
	EVIDENCE	a)	The parcel was not included in the housing inventory of Humboldt County's 2019 Housing Element.
8.	FINDING		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.
	EVIDENCE	a)	The project site is located in the Cape Mendocino Planning Watershed, which under Resolution 18-43 is limited to 650 permits and 223 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 234 permits and the total approved acres would be ~87.3 acres of cultivation.
			FINDINGS FOR APPEAL
9.	FINDING		The Appellant is correct in their assertion that public comments from two parties indicating criminal and dangerous activity have occurred and continue to occur on the site is not substantial evidence to support a finding that the project would be detrimental to the public health, safety and welfare. There is no substantial evidence available on file

			to indicate there have been or there continues to be dangerous or criminal acts occurring on the property in association with this cannabis operation, including the accusation that that was a gun fight on the subject property on or around November of 2018.
	EVIDENCE	a)	There are not any charges filed against the applicant, warrants for arrest, arrests made, or convictions for criminal activity in relation to the alleged gunfight or any other activity on the property.
		b)	No police report or other documentation regarding the gunfight referenced in public comment has been filed. To date, allegations regarding the criminal and dangerous activity in the attached public comments have not been substantiated.
		c)	The Applicant and their Agent of Record provided redacted METRC manifests which appear to show a lawful selling of cannabis, both flower and trim/shake, for 2019 through 2022. METRC was not required by the state Bureau of Cannabis Control (BCC) until 2019, and many distributors, third-party processors, and similar were only initiating METRC system in 2019.
		d)	It is not uncommon for individuals to discharge firearms for hunting or recreational purposes in rural areas of the County and it is difficult to identify the source of that gunfire.
10.	FINDING		The Planning Commission's finding that there was no evidence presented that the approval of this use would not be detrimental to public health, safety, and welfare is erroneous. The Appellant is correct that sufficient evidence has been submitted to demonstrate the proposed use will not be detrimental to public health, safety, and welfare. Conformance with CMMLUO standards and the additional supplemental documents on file constitute significant evidence that the approval of this use would not be detrimental to the public health, safety, and welfare.
	EVIDENCE	a)	The Commercial Medical Marijuana Land Use Ordinance (CMMLUO), also referred to as 'Ordinance 1.0', states in the Purpose and Intent section (314-55.4.2) that the intent of the ordinance is in part to establish regulations for cannabis cultivation "so as to ensure the health and safety of employees, independent contractors, visitors to the area, neighboring property owners, and end users of medical marijuana". This section further states that the intent of the CMMLUO is in part to "to address the County of Humboldt's prerogative to license, permit, and control commercial cultivation, processing, manufacturing and distribution of cannabis... in order to protect the public health, safety, and welfare of the residents of the County of

			Humboldt”.
		b)	The applicant has demonstrated conformance with the following CMMLUO requirements and performance standards: i. Appropriate zoning district for cannabis cultivation. Commercial cannabis activities are not permitted outside of identified appropriate zoning districts. ii. Adherence to appropriate setbacks to property lines, schools, school bus stops, places of religious worship, public parks, and tribal cultural resources. iii. Consent to an annual on-site compliance inspection. iv. Proper storage and use of fuels, fertilizers, pesticides, fungicides, rodenticides, herbicides, and any hazardous materials or waste. v. Noise limits, including 60 decibels at the property line and a 50 decibel limit at 100 feet from the noise source for cultivation operations within one mile of Marbled Murrelet habitat or Northern Spotted Owl habitat. vi. Required licenses and permits from appropriate agencies. These include State Licenses, Business Licenses, enrollment in the State Water Board Cannabis Cultivation Program, Streambed Alteration Permits from California Department of Fish and Wildlife, and Building Permits to ensure all structures and grading associated with the cannabis operation meet applicable building codes. vii. Willingness to execute a Compliance Agreement for pre-existing cannabis operations with identified violations of any statute, ordinance, or regulation. The Compliance Agreement includes requirements for curing violations within two years from the date of permit approval, and submittal of plans for curing identified violations.
		c)	The property is accessed via a category 4 equivalent privately maintained road, and the applicant has been conditioned to pave the intersection of the access road and Wilder Ridge Road.
		d)	An assessment of the well was conducted by Lindberg Geological Consulting which determined the well to be unlikely to be hydrologically connected to surface waters or wetlands.
11.	FINDING		The Appellant is correct that the finding that the <i>manner in which the site has been graded had potential for sedimentation and the construction of greenhouses over the property line onto BLM property shows a past practice of not complying with regulations</i> , is not a

		sufficient basis to deny the requested permit. The Appellant is correct that evidence available on file indicates appropriate measures will be taken such that no significant erosion or sedimentation will occur, and that there is no history of violations associated with this permit application that is not customary for pre-existing cannabis operations.
EVIDENCE	a)	Any violations identified are not outside the scope of violations contemplated by the CMMLUO and associated MND, which will be mitigated with appropriate measures to achieve compliance.
	b)	No fines or penalties have been levied against the applicant for unlawful cultivation or expansions. No Code Enforcement cases are on file for the subject property. All other identified violations have been included in the Conditions of Approval, to be completed subject to an executed Compliance Agreement.
	c)	The applicant has supplied a boundary survey prepared by a licensed land surveyor and had removed the greenhouse in question prior to the end of 2016. BLM referral responses no longer list trespass as a concern, and the applicant has proposed to plant 1.1 acres of timber to provide an increased buffer to BLM land and habitat for sensitive species.
	d)	The Water Resource Protection Plan (WRPP) submitted by the applicant recommends corrective actions to improve sediment and erosion control measures around Greenhouse #4 and large spoil containment area.
	e)	Per recommendations in the WRPP, the applicant is required to install jute netting at the top of the containment bench, seed and straw all dirt areas immediately surrounding the containment area, install silt fencing, and cover the large spoil containment area between the months of October to April with plastic to contain all run-off.
	f)	Conditions of Approval require the applicant to provide an updated Site Management Plan (SMP), adhere to and implement all recommendations in the WRPP/SMP, and meet the requirements of the State Water Resources Control Board (SWRCB) for cannabis cultivation.
	g)	The applicant is required to demonstrate ongoing enrollment with the SWRCB. As part of the Cannabis Cultivation Program, the SWRCB determines based on Tier and Risk Level which enrolled dischargers are required to prepare and submit for approval a Site Erosion Sediment Control Plan, if not already addressed in the Site Management Plan.

		h)	No referral responses received from CDFW, the SWRCB, Building Division, or any other agency identified erosion or sedimentation as a concern.
		i)	The grading on site will be subject to review and approval from the Building Department as part of a Compliance Agreement should the permit be approved. This will ensure any grading that has or will occur is compliant with relevant building codes.
13.	FINDING		The Appellant is correct that the Planning Commission appears to have singled-out this project in finding that the permit should be denied because the BLM property to the south is potential habitat for Northern Spotted Owl and the General Plan calls for protection of listed species. The Appellant is correct that appropriate measures will be taken such that there will be no significant impacts to the Northern Spotted Owl and that other projects with similar circumstances have been approved. This project, if approved as proposed subject to recommended conditions, will be compliant with the General Plan goal of protection of listed species.
	EVIDENCE	a)	The project is consistent with Department Policy Statement (DPS) 16-005, Regulation of Generator Noise in areas of Habitat or Potential Habitat for the Marbled Murrelet or the Northern Spotted Owl. This DPS limits generator noise to 50 decibels at 100 feet from the noise source or at the edge of habitat, whichever is more restrictive.
		b)	The project has been conditioned to restrict construction activities to the time periods outside the nesting bird season (February 15 to September 1) or conduct pre-construction surveys no earlier than three days prior to scheduled ground disturbing activities to determine presence of nesting birds.
		c)	Specific Conditions of Approval to address concerns regarding the Northern Spotted Owl were crafted in concert with the Bureau of Land Management and California Department of Fish and Wildlife. Both agencies expressed satisfaction with the conditions, which included relocation of the nearest cultivation greenhouse away from BLM land and sensitive receptors, stocking the area with 1.1 acres of timber, grid power to serve the project, limiting the project to outdoor cultivation only (no mixed light), and a prohibition on the use of rodenticides.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Humboldt County Board of Supervisors does hereby:

- a) Adopt the findings set forth in this resolution; and
- b) Approve the appeal submitted by Big River Farm, LLC; and
- c) Conditionally approves the Conditional Use Permit and Special Permit for Big River Farms, LLC subject to the conditions of approval attached hereto as Attachment 1A and the Cultivation Operations Plan attached hereto as Attachment 1B and Site Plan attached hereto as Attachment 1C.

The foregoing Resolution is hereby passed and adopted by the Board of Supervisors on December 5, 2023, by the following vote:



Steve Madrone, Chair of the Board

Adopted on motion by Supervisor Bohn, seconded by Supervisor Bushnell and the following vote:

AYES: Supervisors: Bohn, Bushnell, Madrone, Wilson, Arroyo

NOES: Supervisors

ABSENT: Supervisors

ABSTAIN: Supervisors

STATE OF CALIFORNIA)

County of Humboldt)

I, KATHY HAYES, Clerk of the Board of Supervisors, County of Humboldt, State of California, do hereby certify the foregoing to be a full, true and correct copy of the original made in the above entitled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Board of Supervisors



NIKKI TURNER

Deputy Clerk of the Board of Supervisors of
the County of Humboldt, State of California