

**RESOLUTION OF THE PLANNING COMMISSION
OF THE COUNTY OF HUMBOLDT
Resolution Number 19-95**

**Case Numbers: CUP16-346, PLN-11697-SP
Assessor Parcel Number: 210-231-021**

Makes the required findings for certifying compliance with the California Environmental Quality Act and conditionally approves the Hwy 36 Farms, LLC Conditional Use Permit request.

WHEREAS, Hwy. 36 Farms, LLC submitted an application and evidence in support of approving one Conditional Use Permit for the existing 5,000 square foot (SF) outdoor and 7,600 SF of mixed-light medical cannabis cultivation. The project also includes a Special Permit for work being done in the Streamside Management Area.

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 Land Use Ordinance (CMMLUO) adopted by the Humboldt County Board of Supervisors on January 26, 2016. 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 § 15162(c) of CEQA Guidelines; and

WHEREAS, Attachment 2 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; and

WHEREAS, a public hearing was held on the matter before the Humboldt County Planning Commission on August 1, 2019.

NOW, THEREFORE, be it resolved, determined, and ordered by the Humboldt County Planning Commission that:

1. The Planning Commission considered the Addendum to the MND adopted for the Commercial Medical Marijuana Land Use Ordinance; and
2. The Planning Commission makes all of the required findings in Attachment 2 of the Planning Commission staff report for Case Numbers CUP16-346 and PLN-11697-SP, based on the submitted substantial evidence; and
3. Conditional Use Permit CUP16-346 and PLN-11697- SP is approved as recommended and conditioned in Attachment 1.

Adopted after review and consideration of all the evidence on August 1, 2019.


The motion was made by Commissioner Bongio and seconded by Commissioner McCavour.

AYES: Commissioners: Levy, Morris, Bongio, McCavour and Newman.

ABSENT: Commissioners: Mitchell and O'Neill

DECISION: Motion carries 5/0.

I, John Ford, Secretary to the Planning Commission of the County of Humboldt, do hereby certify the foregoing to be a true and correct record of the action taken on the above entitled matter by said Commission at a meeting held on the date noted above.



John Ford, Director
Planning and Building Department

CONDITIONS OF APPROVAL

APPROVAL OF THE CONDITIONAL USE PERMIT IS CONDITIONED ON THE FOLLOWING TERMS AND REQUIREMENTS WHICH MUST BE SATISFIED BEFORE THE PROVISIONAL CANNABIS CULTIVATION PERMIT CAN BE FINALIZED.

1. Within 60 days of project approval, the Applicant shall execute a Compliance Agreement with the Humboldt County Planning Department detailing all necessary permits and infrastructure improvements described under Conditions of Approval #3–15. The agreement shall provide a timeline for completing all outstanding items. All activities detailed under the agreement must be completed to the satisfaction of the Planning and Building Department before the permit may be finalized and no longer considered provisional.
2. Photo documentation shall be provided, indicating that proper containment of all hazardous chemicals/materials within thirty-days, following execution of the final Project permit.
3. The Applicant shall obtain a septic tank destruction permit for removal of the existing cabin.
4. Processing on-site must be supported by a permitted onsite wastewater treatment system. A system must be installed with DEH approval within the 2-year compliance period. Portable toilets shall be provided to cultivation staff and provide a copy of the receipt to the Planning Department.
5. The groundwater well shall be inspected annually to evaluate drawdown, and the potential for the well to go dry. This evaluation should include a standard pump test to be conducted during the dry season. Evaluation of the pump test results should be conducted by a licensed professional with expertise and submitted to the Planning Department for review. The Planning Department reserves the right to require additional water storage if necessary.
6. The Applicant shall secure permits for all unpermitted grading and structures related to the cannabis cultivation and other commercial cannabis activity. The plans submitted for building permit approval shall be consistent with the project description and approved project site plan. A letter or similar communication from the Building Division verifying that all structures related to the cannabis cultivation are permitted will satisfy this condition.
7. The Applicant will submit a remediation and monitoring plan prepared by a qualified professional, for the onsite relocation and shall meet the requirements of that plan.

8. The approved building plans shall meet all applicable fire codes, including fire suppression infrastructure requirements deemed necessary for the project by the Building Inspection Division. Sign off of the Occupancy Permit by the Building Division shall satisfy this requirement.
9. Applicant must obtain an encroachment permit from the California Department of Transportation for the driveway from State Highway 36.
10. The Applicant shall be compliant with the County of Humboldt's Certified Unified Program Agency (CUPA) requirements regarding any hazardous materials. A written verification of compliance shall be required before any provisional permits may be finalized. Ongoing proof of compliance with this condition shall be required at each annual inspection in order to keep the permit valid.
11. The applicant shall submit one copy of the final Water Resource Protection Plan (WRPP) to the Planning and Building Department. The applicant shall implement all corrective actions detailed within the Water Resource Protection Plan (WRPP) developed for the parcel, prepared pursuant to Tier 2 enrollment under the North Coast Regional Water Quality Control Board Cannabis Cultivation Waste Discharge Regulatory Program, including those measures determined necessary during annual and periodic site inspections in accordance with the monitoring element. A copy of the report form portion of the Mitigation and Reporting Program (MRP) shall be submitted annually to the Planning and Building Department concurrent with the submittal to the NCRWQCB. A letter or similar communication from the NCRWQCB or the Third Party Consultant verifying that all their requirements have been met will satisfy this condition. [After July 31, 2019, plans and reporting shall conform to the Cannabis Cultivation Policy and Cannabis General Order adopted October 17, 2017 by the State Water Board.]
12. The Applicant shall secure a final Lake and Streambed Alteration Agreement for the point of diversion as required by the California Department of Fish and Wildlife and comply with all applicable terms.
13. Prior to any additional construction activities or work within currently undisturbed areas, a biological resources study shall be prepared by a qualified professional to address potential impacts to Northern Spotted Owl or Marbled Murrelet. The qualified professional shall also survey for other sensitive species that, based on best professional judgement, may occur in the area. The report should include any recommendations that will be required before and during construction to ensure that no sensitive species are disturbed.

14. The Applicant shall demonstrate the driveway and emergency vehicle turn around, signing and building numbers, conforming access to the planned 5,000-gallon tank for emergency water, and fuel modification standards conform with the Humboldt County Code Section 3112-12, the Fire Safe Regulations. The Applicant shall be responsible for implementing any necessary improvements to bring the driveway and emergency vehicle turn around into compliance. A letter from a qualified engineer shall satisfy this requirement.
15. The property owner shall execute and file with the Planning Division the statement titled, "Notice and Acknowledgment regarding Agricultural Activities in Humboldt County," ("Right to Farm" ordinance) as required by the HCC and available at the Planning Division.
16. The Applicant shall assume presence of Northern Spotted Owl and avoid impacts during breeding season (February 1 to July 9) and implement avoidance measures including the prohibition of generators, project lighting, and fans, including those used in ancillary structures. These restrictions shall remain in place until a qualified biologist, in consultation with CDFW, conducts a scoping report for Northern Spotted Owl and Marbled Murrelet habitat. If habitat is present within the project vicinity, a light and noise attenuation plan shall be developed in consultation with the Planning Department and California Department of Fish and Wildlife prior to the use of any lights, generators, or fans. Conformance will be evaluated using auditory disturbance guidance prepared by the United States Fish and Wildlife Service and any other relevant published literature. Should the applicant propose to achieve noise attenuation by placing the generators inside a building(s), the applicant shall secure a building permit prior to construction.
17. All on-site lighting used in mixed-light greenhouses and nursery propagation facilities that is existing or installed in the future shall be fully shielded and designed and installed to eliminate light leakage that could lead be visible from all property boundaries between sunset and sunrise. The light source should comply with the International Dark Sky Association standards for Lighting Zone 0 and Lighting Zone 1, and be designed to regulate light spillage onto neighboring properties resulting from backlight, uplight, or glare (BUG). Should the Humboldt County Planning Division receive complaints that the lighting is out of alignment or not complying with these standards, within ten (10) working days of receiving written notification that a complaint has been filed, the applicant shall submit written verification that the lights' shielding and alignment has been repaired, inspected, and corrected as necessary.
18. A review fee for Conformance with Conditions as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of

Supervisors (currently \$750.00) shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka. This fee is a deposit, and if actual review costs exceed this amount, additional fees will be billed at the County's current burdened hourly rate.

19. The Applicant is responsible for obtaining all necessary County and State permits and licenses, and for meeting all of the requirements as set forth by other regulatory agencies.
20. The Applicant is required to pay for permit processing on a time and material basis as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors. The Department will provide a bill to the Applicant after the decision. Any and all outstanding Planning fees to cover the processing of the application to decision by the Hearing Officer shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka.
21. A Notice of Determination (NOD) will be prepared and filed with the County Clerk for this project in accordance with the State CEQA Guidelines. **Within three days of the effective date of permit approval**, it is requested that the applicant submit a check or money order for the required filing fee in the amount of \$50 payable to the Humboldt County Clerk/Recorder. If this payment is not received within this time period, the Department will file the NOD and will charge this cost to the project.

Ongoing Requirements/Development Restrictions Which Must be Satisfied for the Life of the Project:

1. All components of the project shall be developed, operated, and maintained in conformance with the Project Description, the approved Site Plan, the Plan of Operations, and these conditions of approval. Changes shall require modification of this permit except where consistent with Humboldt County Code Section 312-11.1, Minor Deviations to Approved Plot Plan.
2. Cannabis cultivation and other commercial cannabis activity shall be conducted in compliance with all laws and regulations as set forth in the CMMLUO and MCRSA, as applicable to the permit type.
3. If operating pursuant to a written approved compliance agreement, permittee shall abate or cure violations at the earliest feasible date, but in no event no more than two (2) years from the date of issuance of a provisional clearance or permit. Permittee shall provide plans for curing such violations to the Planning & Building Department within one (1) year of issuance of the provisional clearance or permit. If good faith effort towards compliance can be shown within the two years following the issuance of the provisional

clearance or permit, The Planning Department may, at the discretion of the Director, provide for extensions of the provisional permit to allow for additional time to meet the outstanding requirements.

4. Prohibition on use of synthetic netting. To minimize the risk of wildlife entrapment, Permittee shall not use any erosion control and/or cultivation materials that contain synthetic (e.g., plastic or nylon) netting, including photo- or biodegradable plastic netting. Geotextiles, fiber rolls, and other erosion control measures shall be made of loose-weave mesh, such as jute, hemp, coconut (coir) fiber, or other products without welded weaves.
5. All refuse is to be contained in wildlife proof storage containers, at all times, and disposed of at an authorized waste management facility.
6. That all imported soil located onsite be fully contained and setback a minimum of 150ft from watercourses and/or wet areas; and that all discarded soil and trash present onsite be removed and properly disposed of at a waste management facility.
7. Possession of a current, valid required license, or licenses, issued by any agency of the State of California in accordance with the MCRSA, and regulations promulgated thereunder, as soon as such licenses become available.
8. Confinement of the area of cannabis cultivation, processing, manufacture or distribution to the locations depicted on the approved site plan. The commercial cannabis activity shall be set back at least 30 feet from any property line, and 600 feet from any School, School Bus Stop, Church or other Place of Religious Worship, or Tribal Cultural Resources, except where a reduction to this setback has been approved pursuant to Section 55.4.11(d).
9. Maintain enrollment in Tier 1, 2 or 3, certification with the North Coast Regional Water Quality Control Board (NCRWQCB) Order No. R1-2015-0023, if applicable, or any substantially equivalent rule that may be subsequently adopted by the County of Humboldt or other responsible agency.
10. Comply with the terms of any applicable Streambed Alteration (1600) Permit obtained from the California Department of Fish & Wildlife.
11. Consent to an annual on-site compliance inspection, with at least 24 hours prior notice, to be conducted by appropriate County officials during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays).
12. Refrain from the improper storage or use of any fuels, fertilizer, pesticide, fungicide, rodenticide, or herbicide.

13. The applicant shall not use any erosion control measures that contain synthetic (e.g. plastic or nylon) monofilament netting, including photo- or biodegradable plastic netting. Geotextiles, fiber rolls, and other erosion control measures shall be made of loose-weave mesh, such as jute, hemp, coconut (coir) fiber, or other products without weaves.
14. If any wildlife is encountered during the authorized activity, the Applicant shall not disturb the wildlife and shall allow wildlife to leave the work site unharmed.
15. Pay all applicable application and annual inspection fees.
16. The noise produced by any generator used on an emergency-only basis for cannabis drying, curing, and processing shall not be audible by humans from neighboring residences. The decibel level for generators measured at the property line shall be no more than 60 decibels. Where applicable, sound levels must also show that they will not result in the harassment of Marbled Murrelet or Spotted Owl species. Conformance will be evaluated using current auditory disturbance guidance prepared by the United State Fish and Wildlife Service, and further consultation where necessary. Under these guidelines, generator noise may not exceed 50dB as measured at 100 feet from the generator or at the edge of the nearest Marbled Murrelet or Spotted Owl habitat, whichever is closer
17. Storage of Fuel - Fuel shall be stored and handled in compliance with applicable state and local laws and regulations, including the County of Humboldt's CUPA program, and in such a way that no spillage occurs.
18. The Master Log Books maintained by the Applicant to track production and sales shall be maintained for inspection by the County.
19. Pay all applicable taxes as required by the Humboldt County Commercial Marijuana Cultivation Tax Ordinance (Humboldt County Code Section 719-1 et seq.).
20. The operation shall participate in the Medical Cannabis Track and Trace Program administered by the Humboldt County Agricultural Commissioner, when available.

Performance Standards for Cultivation and Processing Operations

21. Pursuant to the MCRSA, Health and Safety Code section 19322(a)(9), an Applicant seeking a cultivation license shall "provide a statement declaring the Applicant is an 'agricultural employer,' as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5

commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law.”

22. Cultivators shall comply with all applicable federal, state, and local laws and regulations governing California Agricultural Employers, which may include: federal and state wage and hour laws, CAL/OSHA, OSHA, California Agricultural Labor Relations Act, and the Humboldt County Code (including the Building Code).

23. All persons hiring employees to engage in commercial cannabis cultivation and processing shall comply with the following Employee Safety Practices:

- I. Cultivation operations and processing operations must implement safety protocols and provide all employees with adequate safety training relevant to their specific job functions, which may include:
 - (a) Emergency action response planning as necessary;
 - (b) Employee accident reporting and investigation policies;
 - (c) Fire prevention;
 - (d) Hazard communication policies, including maintenance of material safety data sheets (MSDS);
 - (e) Materials handling policies;
 - (f) Job hazard analyses; and
 - (g) Personal protective equipment policies, including respiratory protection.
- II. Cultivation operations and processing operations must visibly post and maintain an emergency contact list which includes at a minimum:
 - (a) Operation manager contacts;
 - (b) Emergency responder contacts;
 - (c) Poison control contacts.
- III. At all times, employees shall have access to safe drinking water and toilets and handwashing facilities that comply with applicable federal, state, and local laws and regulations. Plumbing facilities and water source must be capable of handling increased usage without adverse consequences to neighboring properties or the environment.
- IV. On site-housing provided to employees shall comply with all applicable federal, state, and local laws and regulations.

24. Term of Commercial Cannabis Activity Conditional Use Permit. Any Commercial Cannabis Cultivation CUP issued pursuant to the CMMLUO shall

expire one (1) year after date of issuance, and on the anniversary date of such issuance each year thereafter, unless an annual compliance inspection has been conducted and the permittees and the permitted site have been found to comply with all conditions of approval.

25. If the inspector or other County official determines that the permittees or site do not comply with the conditions of approval, the inspector shall serve the CUP or permit holder with a written statement identifying the items not in compliance, and the action that the permit holder may take to cure the non-compliance, or file an appeal within ten (10) days of the date that the written statement is delivered to the permit holder. Personal delivery or mailing the written statement to the mailing address listed on the application by regular mail, plus three (3) days after date of mailing, shall constitute delivery. The permit holder may request a reinspection to determine whether or not the permit holder has cured all issues of non-compliance. Failure to request reinspection or to cure any items of non-compliance shall terminate the Special Permit, immediately upon the expiration of any appeal period, or final determination of the appeal if an appeal has been timely filed pursuant to section 55.4.13.

26. Permit Renewals to comply with Updated Laws and Regulations. Permit renewal per Ongoing Condition of Approval #18 above is subject to the laws and regulations effective at the time of renewal, which may be substantially different than the regulations currently in place and may require the submittal of additional information to ensure that new standards are met.

27. Acknowledgements to Remain in Full Force and Effect. Permittee Acknowledges that the County reserves the right to reduce the size of the area allowed for cultivation under any clearance or permit issued in accordance with this Section in the event that environmental conditions, such as a sustained drought or low flows in the watershed in which the cultivation area is located will not support diversions for irrigation.

28. Permittee further acknowledges and declares that:

- I. All commercial cannabis activity that I, my agents, or employees conduct pursuant to a permit from the County of Humboldt shall be solely for medical purposes and all commercial cannabis products produced by me, my agents, or employees are intended to be consumed solely by qualified patients entitled to the protections of the Compassionate Use Act of 1996 (codified at Health and Safety Code section 11362.5); and
- II. All cannabis or cannabis products under my control, or the control of my agents or employees, and cultivated or manufactured pursuant to

- local Ordinance and the California Medical Marijuana Regulation and Safety Act will be distributed within the State of California; and
- III. All commercial cannabis activity conducted by me, or my agents or employees pursuant to a permit from the County of Humboldt will be conducted in compliance with the California Medical Marijuana Regulation and Safety Act.

29. Transfers. Transfer of any leases or permits approved by this project is subject to the review and approval of the Planning Director for conformance with CMMLUO eligibility requirements, and agreement to permit terms and acknowledgments. The fee for required permit transfer review shall accompany the request. The request shall include the following information:

- a. Identifying information for the new Owner(s) and management as required in an initial permit application;
- b. A written acknowledgment by the new Owner in accordance as required for the initial Permit application;
- c. The specific date on which the transfer is to occur; and
- d. Acknowledgement of full responsibility for complying with the existing Permit; and
- e. Execution of an Affidavit of Non-diversion of Medical Cannabis.

30. Inspections. The permit holder and subject property owner are to permit the County or representative(s) or designee(s) to make inspections at any reasonable time deemed necessary to assure that the activities being performed under the authority of this permit are in accordance with the terms and conditions prescribed herein.

Informational Notes:

1. This provisional permit approval shall expire and become null and void at the expiration of one (1) year after all appeal periods have lapsed (see "Effective Date"); except where the Compliance Agreement per Condition of Approval #1 has been executed and the corrective actions pursuant to the agreement are being undertaken. Once building permits have been secured and/or the use initiated pursuant to the terms of the agreement, the use is subject to the Permit Duration and Renewal provisions set forth in Conditions of Approval #19 of the On-Going Requirements /Development Restrictions, above.
2. If cultural resources are encountered during construction activities, the contractor on site shall cease all work in the immediate area and within a 50-foot buffer of the discovery location. A qualified archaeologist as well as the

appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the Applicant and lead agency, develop a treatment plan in any instance where significant impacts cannot be avoided.

Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. If human remains are found, California Health and Safety Code Section 7050.5 requires that the County Coroner be contacted immediately at 707-445-7242. If the Coroner determines the remains to be Native American, the Native American Heritage Commission will then be contacted by the Coroner to determine appropriate treatment of the remains pursuant to Public Resources Code Section 5097.98. Violators shall be prosecuted in accordance with Public Resources Code Section 5097.99.