

**RESOLUTION OF THE PLANNING COMMISSION
OF THE COUNTY OF HUMBOLDT**

Resolution Number: 22-

Record Number: PLN-11066-CUP

Assessor's Parcel Number: 221-011-021

Resolution by the Planning Commission of the County of Humboldt certifying compliance with the California Environmental Quality Act and conditionally approves the Krystal Kings Farms, LLC, Conditional Use Permit and Special Permits request.

WHEREAS, Krystal Kings Farms, LLC, submitted an application and evidence in support of approving a Conditional Use Permit for 18,300 square feet (SF) of existing mixed-light cultivation and 1,830 SF of ancillary propagation. The applicant is authorized to cultivate 5,490 SF of mixed light and a 549 SF propagation area until such time the appropriative water right is issued. Estimated annual water usage is 200,000 gallons (11.11 gal/SF). Irrigation water is sourced from one (1) point of diversion on an unnamed Class II tributary of Salmon Creek. A gutter rain catchment system will also be developed to capture rainwater off the 40'x50' (2,000 SF) barn to reduce reliance on the diversion. Existing available water storage is 15,000 gallons in a series of hard-sided tanks, with an additional 190,000 gallons proposed, for a total of 205,000 gallons of onsite water storage. Drying will occur in an existing a 40'x50' barn, with all other processing occurring offsite at a licensed processing or manufacturing facility. Power is provided by a generator. The proposed project also includes Special Permits for development within the Streamside Management Area (SMA) for the continued use and maintenance of the point of diversion on the project parcel and for removal of portions of existing greenhouses located within the SMA and associated restoration; and

WHEREAS, the County Planning Division, the lead agency, prepared an Addendum to the Final 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. 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, the Humboldt County Planning Commission held a duly-noticed public hearing on **October 6, 2022**, and reviewed, considered, and discussed the application for a Conditional Use Permit and reviewed and considered all evidence and testimony presented at the hearing.

Now, THEREFORE BE IT RESOLVED, that the Planning Commission makes all the following findings:

1. FINDING:

Project Description: The application is a Conditional Use Permit for 18,300 square feet (SF) of existing mixed-light cultivation and 1,830 SF of ancillary propagation. The applicant is authorized to cultivate 5,490 SF of mixed light and a 549 SF propagation area until such time the appropriative water right is issued. Estimated annual water usage is 200,000 gallons (11.11 gal/SF). Irrigation water is sourced from one (1) point of diversion on an unnamed Class II tributary of Salmon Creek. A gutter rain catchment system will also be developed to capture rainwater off the 40'x50' (2,000 SF) barn to reduce reliance on the diversion. Existing available water storage is 15,000 gallons in a series of hard-sided tanks, with an additional 190,000 gallons proposed, for a total of 205,000 gallons of onsite water storage. Drying will occur in an existing a 40'x50' barn, with all other processing occurring offsite at a licensed processing or

manufacturing facility. Power is provided by a generator. The proposed project also includes Special Permits for development within the Streamside Management Area (SMA) for the continued use and maintenance of the point of diversion on the project parcel and for removal of portions of existing greenhouses located within the SMA and associated restoration.

EVIDENCE: Project File: PLN-11066-CUP

2. FINDING: **CEQA.** The requirements of the California Environmental Quality Act have been complied with. The Humboldt County Planning Commission has considered the Addendum to and 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.

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 MND. 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.
- c) A Water Resource Protection Plan (WRPP; WDID 1B16553CHUM) was prepared by Pacific Watershed Associates in February 2017 to show compliance with the North Coast Regional Water Quality Control Board's (NCRWCQB) Order No. 2015-0023. Conditions of approval require the applicant to comply with the State Water Resources Control Board Cannabis Cultivation Policy, which includes development and implementation of a Site Management Plan and submittal of a Notice of Applicability, and maintaining enrollment in the State Cannabis Cultivation Policy for the life of the project.
- d) A *Biological Resource Assessment* was prepared by Corrina Kamroff in May 2021. As noted in the Assessment, the subject property is located approximately 0.15 miles north of Salmon Creek, and there are multiple Class II and Class III tributaries that flow through the parcel. The site was evaluated for potential habitat value to protected, endangered, threatened, rare, and sensitive species by surveying the project area to observe species, habitat types, and habitat quality. Results of the Assessment found that no rare threatened or endangered animals or plants are present within 1,000 feet of the Cultivation Area. Additionally, per the Assessment, there are no documented Northern Spotted Owl (NSO) activity centers within the 1.3-mile BAA of the cultivation site. However, there is the potential for numerous special status wildlife species to occur within the BAA, and several recommendations were included in the Assessment to reduce potential impacts to sensitive species and wildlife movement associated with current and planned operations on the property, including seasonally-appropriate botanical surveys, reducing noise and light pollution, and use of low-risk exempt pesticides. No additional ground disturbance is proposed under the project.

The project proposes mixed-light cultivation and is conditioned to ensure any lighting adheres to Dark Sky Association standards. Additionally, power will be provided by a 35 kW Whisperwatt generator, and noise attenuation measures will be required to ensure noise levels comply with required thresholds. Specifically, conditions of approval will require noise to be at below 50 decibels at 100 feet from the generator or at the edge of the nearest forest habitat, whichever is closer, as required by Section 314-55.4.11(o) Humboldt County Code. Further, the project is conditioned to refrain from using synthetic netting, to ensure refuse is contained in wildlife-proof storage, and to refrain from using anticoagulant rodenticides to further protect wildlife. As proposed and conditioned, the project is consistent with CCLUO performance standards and will not negatively impact NSO or other sensitive species.

- e) The cultivation of cannabis will not result in the net conversion of timberland. A Less Than Three Acre Conversion Mitigation Plan was prepared in May 2021 by Hohman and Associates Forestry Consultants, which concluded that a total of 1.53 acres of timber conversion occurred on the project site; however, all conversion occurred prior to CMMLUO environmental baseline date of January 1, 2016. Fourteen (14) recommendations were included in the Report for items identified as being in conflict with the Forest Practice Rules or have the potential to cause environmental damage. The project is conditioned to implement all remaining corrective actions identified in the Less Than Three Acre Conversion Mitigation Plan. No additional tree removal is proposed or authorized by this permit.
- f) A Cultural Resources Investigation was prepared by Archaeological Research and Supply Company in March 2021 (on file and confidential), which noted three (3) prehistoric isolated chert flakes were identified, but concluded that the proposed project will not result in any adverse changes to historical or archaeological resources. The Report, as well as the Bear River Band of the Rohnerville Rancheria in September 2021, recommended Inadvertent Discoveries Protocol, which has been included as an ongoing condition of approval.
- g) Road Evaluation Reports were prepared by Steven Luu (SL Consulting Services, Inc.) in July 2021 for a 2.35-mile segment of Salmon Creek Road (from the transition from asphalt to gravel) to the property line of APN 221-071-043 (at the end of Salmon Creek Road and start of the private driveway) and for a 1.5-mile segment of the private road to the subject property. The Reports indicated the road segments are developed to the equivalent of a road Category 4 standard and are suitable for safe access to and from the project site.

A secondary Road Evaluation was conducted by Chapman Engineering in February from the junction with State Highway 101, exit 653 to the project parcel that is accessed from Salmon Creek Road. The Report concludes the existing road is adequate for all anticipated traffic at peak operations.

Per comments received from the Department of Public Works, Land Use Division in February 2018, any existing or proposed driveways that will

serve as access for the proposed project that connect to a County-maintained road shall be improved to current standards for a commercial driveway and that private road intersections onto the County road shall be maintained in accordance with County Code section 341-1 (Sight Visibility Ordinance), which have been included as conditions of approval. .

FINDINGS FOR CONDITIONAL USE PERMIT AND SPECIAL PERMITS

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 Agriculture General (AG) land use designation. 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) zone in which the site is located. The subject parcel is split-zoned Timberland Production (TPZ), however, existing and proposed development is located outside of the TPZ-portion of the subject parcel.

EVIDENCE a) The Agriculture Exclusive (AE) zone is intended to be applied in fertile areas in which agriculture is and should be the desirable predominant use and in which the protection of this use from encroachment from incompatible uses is essential to the general welfare.

b) All general agricultural uses are principally permitted in the AE zone.

c) Humboldt County Code section 314-55.4.8.2.2 allows cultivation of up to 43,560 square feet of existing outdoor cannabis and up to 22,000 square feet of existing mixed-light cannabis on a parcel over 1 acre subject to approval of a Conditional Use Permit and a determination that the cultivation was in existence prior to January 1, 2016. The application for 18,300 square feet of mixed-light cultivation on an 85.68-acre parcel is consistent with this and with the cultivation area verification prepared by the County.

5. FINDING The proposed development is consistent with the requirements of the CMMLUO Provisions of the Zoning Ordinance.

EVIDENCE a) The CMMLUO allows existing cannabis cultivation to be permitted in areas zoned AE (HCC 314-55.4.8.2.2).

b) The parcel was created in compliance with all applicable state and local subdivision regulations, as it was created in its current configuration by a lot line adjustment, as described in the Notice of Lot Line Adjustment and Certificate of Subdivision Compliance (Record No. 1993-34868), recorded December 6, 1993.

- c) Irrigation water will be sourced from an existing point of diversion from an unnamed Class II tributary of Salmon Creek. A gutter rain catchment system is also proposed to capture rainwater off the 40'x50' (2,000 SF) barn (used for cultivation drying, nursery, and AG chemical storage) to reduce reliance on the point of diversion. Existing available water storage is 15,000 gallons in a series of hard-sided tanks, with an additional 190,000 gallons proposed, for a total of 205,000 gallons of onsite water storage.

Projected water diversion for irrigation for cultivation will occur from November to March with the most amount of water being diverted on the months of December and January, outside of the required forbearance period of May 15 -October 31. Please note a water right has not yet been issued by the SWRCB for use of the point of diversion. However, per the Cultivation and Operations Plan (Attachment 3), the applicant has applied for a Cannabis Small Irrigation Use Registration (SIUR; Application H510517) with the State Water Resources Control Board (SWRCB). Conditions of approval require the applicant to finalize and comply with all terms and conditions of the Cannabis SIUR.

Regarding the proposed gutter rainwater catchment system, it is estimated that the proposed system has the potential to capture approximately 70,618 gallons per year on average, based on average rainfall amounts for the project area and catchment area. The 70,618 gallons captured through the rainwater catchment system will be stored in hard-sided water storage tanks. Once the rainwater catchment system is operational, the reliance of the water diversion for irrigation will lessen by approximately 35.3 percent, including support of the ancillary nursery space.

As a current water right is not currently in place for the project, Planning staff is recommending the applicant be authorized to cultivate a reduced cultivation area that is supported by rainwater catchment until such time the SWRCB issues the water right. As noted above, there is a potential to capture 70,618 gallons per year on average. This represents 35% of the annual water demand for 18,300 SF of cultivation. Therefore, Planning staff recommends the applicant be authorized to cultivate 5,490 SF of cannabis until such time the water right is issued. A similar reduction in the propagation area would be required as well, to 549 SF (which equates to 10% of the cultivation area). The applicant will be required to adhere to and implement requirements of the SWRCB, including the seasonally appropriate time to divert water. Meaning, if the water right were to be issued after April 1, 2023, the applicant would not be allowed to divert water until the following fall/winter and may have a reduced cultivation area for two (2) cultivation seasons or more. Conditions of approval require the applicant to obtain building permits (as applicable), install a minimum of 55,618 gallons to bring the site's water storage amount up to the potential rainwater catchment amount (70,618 gallons), and demonstrate the water storage tanks are full prior to the beginning of the 2023 cultivation season. In addition, the tanks shall be located in a previously disturbed area outside of all required SMA buffers.

- d) Road Evaluation Reports were prepared by Steven Luu (SL Consulting Services, Inc.) in July 2021 for a 2.35-mile segment of Salmon Creek Road (from the transition from asphalt to gravel) to the property line of APN 221-071-043 (at the end of Salmon Creek Road and start of the private driveway) and for a 1.5-mile segment of the private road to the subject property. The Reports indicated the road segments are developed to the equivalent of a road Category 4 standard and are functionally appropriate for the expected traffic.

A secondary Road Evaluation was conducted by Chapman Engineering in February from the junction with State Highway 101, exit 653 to the project parcel that is accessed from Salmon Creek Road. The Report concludes the existing road is adequate for all anticipated traffic at peak operations.

Per comments received from the Department of Public Works, Land Use Division in February 2018, any existing or proposed driveways that will serve as access for the proposed project that connect to a County-maintained road shall be improved to current standards for a commercial driveway and that private road intersections onto the County road shall be maintained in accordance with County Code section 341-1 (Sight Visibility Ordinance), which have been included as conditions of approval.

- e) The slope of the land where cannabis will be cultivated is less than 15%.
- f) A Less Than Three Acre Conversion Mitigation Plan was prepared in May 2021 by Hohman and Associates Forestry Consultants, which concluded that a total of 1.53 acres of timber conversion occurred on the project site; however, all conversion occurred prior to CMMLUO environmental baseline date of January 1, 2016. Fourteen (14) recommendations were included in the Report for items identified as being in conflict with the Forest Practice Rules or have the potential to cause environmental damage. The project is conditioned to implement all remaining corrective actions identified in the Less Than Three Acre Conversion Mitigation Plan. No additional tree removal is proposed or authorized by this permit.
- g) The location of the cultivation complies with all setbacks required in Section 314-55.4.11.d. It is more than 30 from any property line, more than 300 feet from any off-site residence, more than 600 feet from any school, church, public park or Tribal Cultural Resource.

6. FINDING

The cultivation of 18,300 square feet of cannabis 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 road that has been certified by a licensed engineer to safely accommodate the amount of traffic generated by the proposed cannabis cultivation.
- 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, 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 sized in the area.

- c) The location of the proposed cannabis cultivation is more than 300 feet from the nearest off-site residence.
- d) Irrigation water will come from an existing point of diversion from an unnamed Class II tributary from Salmon Creek and a proposed gutter rainwater catchment system. Once the proposed gutter rainwater catchment system is constructed on the existing 2,000 SF barn, it is anticipated there would be sufficient water available from rainwater catchment system to reduce the reliance of the point of diversion.

As a current water right is not currently in place for the project, Planning staff is recommending the applicant be authorized to cultivate a reduced cultivation area that is supported by rainwater catchment until such time the SWRCB issues the water right. As noted above, there is a potential to capture 70,618 gallons per year on average. This represents 35% of the annual water demand for 18,300 SF of cultivation. Therefore, Planning staff recommends the applicant be authorized to cultivate 5,490 SF of cannabis until such time the water right is issued. A similar reduction in the propagation area would be required as well, to 549 SF (which equates to 10% of the cultivation area). The applicant will be required to adhere to and implement requirements of the SWRCB, including the seasonally appropriate time to divert water. Meaning, if the water right were to be issued after April 1, 2023, the applicant would not be allowed to divert water until the following fall/winter and may have a reduced cultivation area for two (2) cultivation seasons or more. Conditions of approval require the applicant to obtain building permits (as applicable), install a minimum of 55,618 gallons to bring the site's water storage amount up to the potential rainwater catchment amount (70,618 gallons), and demonstrate the water storage tanks are full prior to the beginning of the 2023 cultivation season. In addition, the tanks shall be located in a previously disturbed area outside of all required SMA buffers.

- e) Power is currently provided by a 35-kilowatt (kW) Whisperwatt generator. To reduce impacts associated with NSO, greenhouse gases and wildfire, the 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.
- f) 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.

7. FINDING

To provide minimum standards pertaining to the use and development of land located within Streamside Management Areas (SMAs) and other wet areas (OWA) to implement the County's Open Space Element of the General Plan.

EVIDENCE

- a) Under the project, portions of five (5) existing greenhouses (two 40'x135' and three 20'x120') currently located within the required Streamside Management Area (SMA) buffers will be removed in order to meet required SMA setbacks, including a 10-foot portion from the two (2) 40'x135' greenhouses and a 35-foot portion from the three (3) 20'x120' greenhouses will be removed to meet the SMA setback. Additional 20'x55' and 20'x60' greenhouses will then be added for a total flowering canopy of 18,300 SF. Conditions of approval require the removal to occur without the use of heavy equipment and to provide evidence to the Planning Department that the removal has occurred. Additionally, the two (2) additional greenhouses are also required to be placed on a previously disturbed area without the use of heavy machinery. Additional conditions of approval require the applicant to adhere to and implement the projects and recommendations contained in the FSAA, adhere to the terms and conditions of the appropriative water right from the SWRCB for the point of diversion (once issued), and provide evidence to the Planning Department that the projects included in the FSAA are completed to the satisfaction of CDFW. By implementing permit conditions from CDFW and the SWRCB, impacts to the SMA will be minimized.

8. 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 but does have the potential to support one housing unit. The approval of cannabis cultivation on this parcel will not conflict with the ability for a residence to be constructed on this parcel.

9. 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 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 298 permits and the total approved acres would be 60.43 acres of cultivation.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Humboldt County Planning Commission does hereby:

- Adopt the findings set forth in this resolution; and
- Conditionally approves the Conditional Use Permit and Special Permits for Krystal Kings Farm, LLC, based upon the Findings and Evidence and subject to the conditions of approval attached hereto as Attachment 1 and incorporated herein by reference; and

Adopted after review and consideration of all the evidence on October 6, 2022.

The motion was made by COMMISSIONER _____ and second by COMMISSIONER _____ and the following ROLL CALL vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
DECISION:

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