

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

Resolution Number: 23-

Record Number: PLN-12286-CUP

Assessor's Parcel Number: 201-111-029

Resolution by the Planning Commission of the County of Humboldt certifying compliance with the California Environmental Quality Act and conditionally approves the Humboldt Spirit, Inc. Conditional Use Permit and Special Permit request.

WHEREAS, Thomas Morgan, submitted an application and evidence in support of approving a Conditional Use Permit for 12,040 square feet (SF) of existing outdoor cannabis cultivation in greenhouses and 786 SF of ancillary propagation, with irrigation water sourced from a permitted stream diversion and a well. The application also includes a Special Permit as is required for restoration work within in the Streamside Management Area; 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 September 21, 2023 and reviewed, considered, and discussed the application for the Conditional Use Permit and Special 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: A Conditional Use Permit for 12,020 square feet of existing outdoor commercial cannabis cultivation supported by a 768 square foot ancillary nursery. Annual Water Usage is estimated at 120,000 gallons. Total existing and proposed Storage equals 98,200 gallons. Processing will occur offsite. Electricity is provided by generators and solar is proposed. The project includes a Special Permit for the remediation of a historic cultivation area within a streamside management area.

EVIDENCE a) Project File: PLN-12286-CUP

2. FINDING: **CEQA.** The requirements of the California Environmental Quality Act have been complied with. The Humboldt County Planning Commission has considered the adopted 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 has considered the Addendum to the MND that was prepared for the Humboldt Spirit, Inc. 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 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) The nearest Marbled Murrelet habitat is approximately 9 miles to the northwest. The project is located approximately 3,100 feet, or .58 miles to the nearest known Northern Spotted Owl (NSO) activity center. There was a positive observation of a Northern Spotted Owl on an adjacent parcel on July 6, 2000. Although the proposed project is for outdoor cultivation, the applicant is proposing to use artificial lighting in the 768-square-foot propagation greenhouse. 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 outdoor and three pending (outdoor) commercial cannabis applications within 1 mile of the NSO activity center, and, because most of the applications 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.

- d) The cultivation of cannabis will not result in the conversion of timberland.
- e) The project was referred to the Northwest Information Center (NWIC), and the Bear River Band of Rohnerville Rancheria. A Cultural Resource Investigation Report was prepared by Archaeological Research and Supply Company in July 2019. No cultural resources were found, and the investigation concluded that the project would not affect cultural resources. The Tribal Historic Preservation Officer received the investigation and concurred that the potential for cultural resource impacts would be mitigated by adding the standard inadvertent discovery protocol to the project as a condition of approval.
- f) A road evaluation report was submitted by the applicant stating that the entirety of the 1.7-mile road connecting to State Route 36 is developed to the equivalent of road category 4 standards.

Additional Conditions include: within one year from the permit effective date, the applicant shall take steps to join or 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 (208-111-029). 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.

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 Residential Agriculture (RA) land use designation. The proposed cannabis cultivation, an agricultural product, is within land planned and zoned for agricultural uses. The use is consistent with the use of Open Space land for managed production of resources. 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 principally permitted use of the existing Forestry Recreation (FR) zone in which the site is located.

EVIDENCE

- a) The applicant is seeking a Conditional Use Permit for an 12,020 square foot outdoor commercial cannabis cultivation on a property zoned FR-B-5(40). The proposed use is specifically allowed with Conditional Use Permit in this zoning district and under Section 314-55.4.8.2.2 of the CMMLUO.
- b) All general agricultural uses are principally permitted in the FR zone.
- c) Humboldt County Code section 314-55.4.8.2.2 allows cultivation of up to 43,560 square feet of existing cannabis on a parcel over 1 acre in the FR zone 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 12,020 square feet of outdoor cultivation on a 40-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 FR (HCC 314-55.4.8.2.2).
- b) The parcel was created in compliance with all applicable state and local subdivision regulations, as A Notice of Merger recorded on August 19, 1983, Document Number 16436, confirmed the legality of the parcel.
- c) Water for irrigation will be provided by a permitted well and permitted surface diversion. The project is conditioned on the applicant developing enough water storage to serve the cultivation operation though the May 15th to October 31st forbearance period.
- d) The applicant submitted a Road Evaluation Report on September 10, 2018. The report states that the entire road segment is developed to the equivalent of road category 4 standard.

Additional conditions include requiring within one year from the permit effective date, the applicant shall take steps to join or 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 (208-111-029). 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 event 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.

- e) The cultivation of cannabis will not result in the net conversion of timberland.
- f) 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, public park or Tribal Cultural Resource.

6. FINDING

The cultivation of 12,020 square feet of cannabis cultivation with ancillary propagation 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 found 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) Irrigation water will come from a point of diversion and a well. The project is conditioned to require forbearance from both the diversion and the well during the typical forbearance period, and the well has been found to have no direct connection to any surface waters in the vicinity. The project site is located approximately 1,100 feet from Little Larabee Creek, which drains to the Van Duzen River. The Van Duzen River is a navigable waterway

which provides recreational opportunities such as kayaking, swimming and fishing. Given the lack of connection to any surface water features that could flow into the Van Duzen River, there will be no adverse impacts to these public trust resources as a result of the use of the well. Additionally, given the requirement to forbear from the diversion during the dry season, the project will not adversely impact these resources.

- d) 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

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 site was not included in the housing inventory of Humboldt County's 2019 Housing Element. The approval of cannabis cultivation on this site will not conflict with the ability for the residence to continue to be utilized on this parcel.

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 in the Van Duzen Planning Watershed, which under Resolution 18-43 is limited to 425 permits and 146 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 153 cultivation permits and the total approved acres would be 41.87 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 Permit for Thomas Morgan based upon the Findings and Evidence and subject to the conditions of approval attached hereto as Attachment 1A and incorporated herein by reference.

Adopted after review and consideration of all the evidence on September 21, 2023.

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