

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings; Meeting on October 26, 2021

Resolution No. ___ - ___ Resolution of the Board of Supervisors of the County of Humboldt FINDING THAT THE BOARD OF SUPERVISORS HAS CONSIDERED THE ADDENDUM TO THE ADOPTED MITIGATED NEGATIVE DECLARATION FOR THE COMMERCIAL MEDICAL MARIJUANA LAND USE ORDINANCE, ADOPTING FINDINGS OF FACT, AND APPROVING CONDITIONAL USE PERMIT MODIFICATION RECORD NO. PLN-17430-CUP

WHEREAS, Rocci Costa applied for a Zoning Clearance Certificate for 10,000 square feet of new commercial cannabis cultivation under the County's Commercial Medical Marijuana Land Use (CMMLUO) Ordinance on December 21, 2016; and

WHEREAS, Section 314-55.4.6.7 of the County's Commercial Cannabis Land Use Ordinance (CCLUO) adopted on May 8, 2018 retroactively requires all Zoning Clearance Certificate applications submitted prior to January 1, 2017 in specified Community Planning Areas comply with specific provisions intended to ensure compatibility with surrounding uses and control of potential nuisance; and

WHEREAS, to comply with Section 314-55.4.6.7 of the CCLUO, Rocci Costa applied for a Conditional Use Permit to allow for open-air cultivation within 600 feet of a residence on a separately owned parcel; and

WHEREAS, on March 5, 2020, the Planning Commission denied the requested Conditional Use Permit; and

WHEREAS, an appeal of the Planning Commission denial was timely filed by Rocci Costa; and

WHEREAS, on March 16, 2021, the Board of Supervisors held a duly noticed public hearing, *de-novo*, and reviewed, considered, and discussed the application and appeal for the Conditional Use Permit; and reviewed and considered all public testimony and evidence presented at the hearing; and

WHEREAS, on March 16, 2021, the Board of Supervisors:

1. Found that the application was revised to seek only an entitlement to Retire, Remediate and Relocate (RRR); and
2. Approved the Appeal submitted by Rocci Costa identified as Record Number PLN-16376; and, and
3. Approved the requested Conditional Use Permit Application No. PLN-12176 for Retirement, Remediation and Relocation (RRR) purposes only; and

WHEREAS, on August 31, 2021, Rocci Costa filed an application to modify the previously approved Conditional Use Permit, identified as record number PLN-2021-17430; and

WHEREAS, on October 26, 2021, the Board of Supervisors held a duly-noticed public hearing and reviewed, considered, and discussed the application for a modification to the Conditional Use Permit to allow for the RRR to be rescinded and cultivation approved on the original site; 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 and adopts all of the following evidence:

- 1. FINDING:** **Project Description:** The application is for a modification to Conditional Use Permit (Record Number PLN-12176-CUP) allowing relocation of a new cannabis project proposed on APN 516-211-025 due to neighborhood concern in the Blue Lake Community Planning Area to allow the cultivation take place on the original parcel (APN 516-211-025) as initially proposed, as the applicant was unable secure a location for the 20,000 square-foot entitlement. The modified project will consist of 10,000 square feet of full-sun outdoor dry-farmed cannabis cultivation, planted in prime agricultural soil on APN 516-211-025. Cannabis will be dried on site in portable carports and processed off site at a licensed processing facility. The site contains an existing 50-foot-wide access easement along the northern property line used by the adjacent neighbor to access APN 516-211-023. The existing driveway to APN 516-211-023 is not contained within the access easement. The applicant proposes to relocate the driveway to within the 50-foot-wide access easement.

EVIDENCE: a) Project File: PLN-2021-17430

- 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 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 MND prepared for the CMMLUO. 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 project will be planted in the native soil and requires minimal ground disturbance.
- d) Review of the California Natural Diversity Database (CNDDDB) in October 2021 indicates no mapped sensitive species onsite. However, Northern Spotted Owl (NSO) habitat exists in the vicinity and the nearest activity center is within 1.3 miles of the site. The project proposes full-sun outdoor cultivation using lighting only for propagation, and fans and dehumidifiers for drying. The project is conditioned to adhere to International Dark Sky Standards and to limit project noise to 50 dB 100 feet from the source or at the nearest tree line, whichever is closer. Limited power will be provided by PG&E.
- e) The Cultural Resources referral process carried concluded that the proposed project will not result in any adverse changes to historical or archaeological resources and recommended Inadvertent Discoveries Protocol.
- f) The project site is accessed from Warren Creek Road, which .95 mile is County maintained road. The Department of Public Works (PW) indicated that Warren Creek does not meet category 4 standards and is quite narrow over most portions of the road. There are multiple pinch points that have limited sight distance. The applicant submitted a Road Evaluation completed by Green Road Consulting dated December 9, 2019. In order for the road to meet functional capacity, the applicant will install seven turns-outs on Warren Creek Road prior to any commencement of operations. In addition, the applicant shall restrict from the use of wider than a regular pickup to off peak hours, being 9:00 AM to 4:00 PM.

FINDINGS FOR CONDITIONAL USE PERMIT MODIFICATION

3. FINDING

The proposed development is in conformance with the County General Plan, Open Space Plan, and the Open Space Action Program.

EVIDENCE

- a) The proposed cannabis cultivation, an agricultural product, is within land planned and zoned for agricultural purposes (Residential Agriculture [RA5-20] land use designation and Agricultural General (AG) zoning designation,) 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 Agricultural General (AG) zone in which the site is located.

- EVIDENCE**
- a) The Agricultural General Zone is intended to be applied in areas of the County that support and can continue to support agricultural uses.
 - b) All general agricultural uses are principally permitted in the AG zone.
 - c) Humboldt County Code section 314-55.4.8.2.1 allows new outdoor or mixed-light cannabis cultivation on parcels 5 acres or larger, on parcels zoned Agricultural General, with prime agricultural soils.

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

- EVIDENCE**
- a) The CMMLUO allows new cannabis cultivation to be permitted in areas zoned AG (HCC 314-55.4.8.2.1).
 - b) The parcel of land known as APN 516-211-025 is a legal parcel created as Parcel 2 of Parcel Map 1342 for Thomas R. Jackson, recorded on July 14, 1978 in Book 11 of Parcel Maps, Page 149. There is no evidence indicating that there have been any subsequent acts to merge or divide the parcel; therefore, the subject parcel was lawfully created in its current configuration and can be developed as proposed.
 - c) Water for irrigation will be provided by rainwater catchment only.
 - d) The slope of the land where cannabis will be cultivated is less than 15%.
 - e) The location of the cultivation complies with all setbacks required in Section 314-55.4.11.d. It is more than 30 feet from property line, and more than 600 feet from any school, church, public park or Tribal Cultural Resource. Although the Pacific Union School District has recommended denial of the project there are no schools or school bus stops within 600 feet.

6. FINDING The cultivation of 10,000 square feet of 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 applicant has submitted a Road Evaluation completed by Green Road Consulting dated December 9, 2019. PW provided additional comments on January 6, 2020 regarding the Road Evaluation and recommended, that in order for the road to meet functional capacity, applicant shall install seven turns-outs on Warren Creek Road prior to any commencement of operations, as detailed in the map provided in the referral response. In addition, the applicant shall restrict from the use of wider than a regular pickup to off peak hours, being 9:00 AM to 4:00 PM.
 - b) The location of the proposed cannabis cultivation is more than 300 feet from the nearest off-site residence. Only one adjacent residence is located within 600 feet of the proposed cultivation site (570 feet).
 - c) Water for cannabis cultivation irrigation is to be provided by rainwater catchment only.
 - d) The site contains an existing 50-foot-wide access easement along the northern property line used by the adjacent neighbor to access APN 516-211-023. The existing driveway to APN 516-211-023 is not contained within the access easement. The applicant proposes to relocate the driveway to within the 50-foot-wide access easement.

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 project does not involve housing and does not limit the ability of the parcel to be developed for residential uses. It is developed with a storage shed, which will remain. The project is in conformance with the standards in the Housing Element.

NOW, THEREFORE, be it resolved that the Board of Supervisors hereby:

- 1 Finds that the Board of Supervisors has considered the addendum to and the Mitigated Negative Declaration adopted for the CMMLUO; and
- 2 Makes all of the findings for approval; and
- 3 Approves the requested Conditional Use Permit Modification for Record Number

PLN-2021-17430.

The foregoing Resolution is hereby passed and adopted by the Board of Supervisors on October 26, 2021, by the following vote:

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

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

Chair

Humboldt County Board of Supervisors

STATE OF CALIFORNIA)) SS. County of Humboldt

I, Kathy Hayes, Clerk of the Board of Supervisors of the 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-titled 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.

KATHY HAYES Clerk of the Board of Supervisors of the County of Humboldt, State of California

By: KATHY HAYES

Date: _____, 2021

By _____ Deputy

ATTACHMENT 1

RECOMMENDED CONDITIONS OF APPROVAL

APPROVAL OF THE SPECIAL PERMIT IS CONDITIONED ON THE FOLLOWING TERMS AND REQUIREMENTS WHICH MUST BE SATISFIED BEFORE REALEASE OF THE BUILDING PERMITS OR INITIATION OF OPERATION.

A. Development Restrictions

1. The applicant is responsible for obtaining all necessary County and State permits and licenses, and for meeting all requirements set forth by other regulatory agencies.
2. 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 Planning and Building 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.
3. The Applicant is responsible for costs for post-approval review for determining project conformance with conditions. A deposit is collected to cover this staff review. Permit conformance with conditions must be demonstrated prior to release of building permit or initiation of use and at time of annual inspection. A conformance review deposit as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors (currently \$750) shall be paid within sixty (60) days of the effective date of the permit or upon filing of the Compliance Agreement (where applicable), whichever occurs first. Payment shall be made to the Humboldt County Planning Division, 3015 "H" Street, Eureka.
4. A Notice of Determination (NOD) will be prepared and filed with the County Clerk for this project in accordance with the State CEQA Guidelines. The Department will file the NOD and will charge this cost to the project.
5. The applicant shall install the nine turns-outs and the signage on Warren Creek Road prior to any commencement of operations, as detailed in the Road Evaluation Report prepared by Green Road Consultants dated January 2020. The applicant shall submit evidence that a road maintenance association was formed or evidence of an attempt to form a road maintenance association. The applicant shall secure encroachment permits from the Department of Public Works Land Use Division prior to any work within the public right-of-way associated with development of proposed turnouts on the publicly maintained section of Warren Creek Road.
6. The applicant shall secure permits for all structures related to the cannabis cultivation and other commercial cannabis activity, including but not limited to, the proposed propagation greenhouse, and any fencing exceeding six feet in height. The plans submitted for building permit approval shall be consistent with the project description and the approved project site plan. A letter or similar communication from the Building Division verifying that all structures and/or development related to the cannabis cultivation are permitted will satisfy this condition.
7. The applicant shall be compliant with the County of Humboldt's Certified Unified Program

Agency (CUPA) requirements regarding hazardous materials. A written verification of compliance shall be required before any 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.

8. The applicant 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.

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

1. The combination of greenhouse fan or other operational equipment created noise must not result in the harassment of Northern Spotted Owl species as required to meet the performance standards for noise set by Department Policy Statement No. 16-005 clarifying CMMLUO Section 55.4.11 (o) requirements. The combined noise levels measured at 100 feet or the edge of habitat, whichever is closer, shall be at or below 50 decibels. Conformance will be evaluated using current auditory disturbance guidance prepared by the United State Fish and Wildlife Service, and further consultation where necessary. A building permit shall be obtained should any structures be necessary for noise attenuation.
2. All artificial lighting shall be fully contained within structures such that no light escapes (e.g., through blackout curtains). Structures shall be enclosed between 30 minutes prior to sunset and 30 minutes after sunrise to prevent disruption to crepuscular wildlife. Security lighting shall be motion activated and comply with the International Dark-Sky Association standards and Fixture Seal of Approval Program; see: <https://www.darksky.org/our-work/lighting/lighting-for-citizens/lighting-basics/>. Standards include but are not limited to the following, 1) light shall be shielded and downward facing, 2) shall consist of Low-Pressure Sodium (LPS) light or low spectrum Light Emitting Diodes (LED) with a color temperature of 3000 kelvins or less and 3) only placed where needed.
3. Should the Humboldt County Planning Division receive complaints that the lighting or noise is not complying with the standards listed above in items B.1. and B.2., 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, and noise levels have been repaired, inspected, and corrected as necessary.
4. Water meters shall be installed and maintained at the outlet of the storage tanks that provide irrigation water to the operation. The applicant shall maintain a monthly record of all water used for the operation. A copy of these records shall be stored and maintained at the cultivation site and kept separately or differentiated from any record of water use for domestic, fire protection, or other irrigation purposes. Irrigation records shall be reported to the County on an annual basis, at least thirty (30) days prior to the date of each annual permit inspection. Records shall also be made available for review during site inspections by local and state officials
5. Prohibition on use of synthetic netting. To minimize the risk of wildlife entrapment, Permittee shall not use any cultivation or erosion control 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.

6. The applicant shall restrict the use of vehicles wider than a regular pickup to off peak hours, being 9:00 AM to 4:00 PM. The operation must strictly follow the Traffic Management Plan, prepared by Green Road Consultants dated January 2020.
7. All refuse shall be contained in wildlife proof storage containers, at all times, and disposed of at an authorized waste management facility.
8. Should any wildlife be encountered during work activities, the wildlife shall not be disturbed and be allowed to leave the work site unharmed.
9. The use of anticoagulant rodenticide is prohibited.
10. The operator shall provide information to all employees about the potential health impacts of cannabis use on children. Information shall be provided by posting the brochures from the Department of Health and Human Services titled "Cannabis Palm Card" and "Cannabis Rack Card." This information shall also be provided to all employees as part of the employee orientation.
11. All components of 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. If offsite processing is chosen to be the preferred method of processing, this permit shall be modified to identify the offsite licensed facility.
12. Cannabis cultivation and other commercial cannabis activity shall be conducted in compliance with all laws and regulations as set forth in the CMMLUO and MAUCRSA, as applicable to the permit type.
13. Possession of a current, valid required license, or licenses, issued by any agency of the State of California in accordance with the MAUCRSA, and regulations promulgated thereunder.
14. Confinement of the area of cannabis cultivation, drying and storage 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).
15. Maintain enrollment in Tier 1 or 2, certification with State Water Quality Control Board (SWQCB) Order WQ 2019-0001-DWQ, if applicable, or any substantially equivalent rule that may be subsequently adopted by the County of Humboldt or other responsible agency.
16. Comply with the terms of any applicable Lake and Stream Alteration (1600 or 1602) Permit obtained from the California Department of Fish and Wildlife (CDFW).
17. 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 through Friday, 9:00 a.m. to 5:00 p.m., excluding holidays).
18. Refrain from the improper storage or use of any fuels, fertilizer, pesticide, fungicide, rodenticide, or herbicide.
19. Pay all applicable application, review for conformance with conditions and annual inspection

fees.

20. Fuel shall be stored and handled in compliance with applicable state and local laws and regulations, including the County of Humboldt's Certified Unified Program Agency (CUPA) program, and in such a way that no spillage occurs.
21. The master log-books maintained by the applicant to track production and sales shall be maintained for inspection by the County.
22. Pay all applicable taxes as required by the Humboldt County Commercial Marijuana Cultivation Tax Ordinance (Humboldt County Code Section 719-1 et seq.).
23. Term of Commercial Cannabis Activity Special 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.
24. 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 permit holder with a written statement identifying the items not in compliance, and the action that the permit holder may take to cure the noncompliance, 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 noncompliance. Failure to request reinspection or to cure any items of noncompliance 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.
25. Permit Renewals to Comply with Updated Laws and Regulations. Permit renewal 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.
26. 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.
27. 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;
 - d. Acknowledgement of full responsibility for complying with the existing permit; and

e. Execution of an Affidavit of Non-diversion of Cannabis.

28. 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 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") unless the use is initiated. Once building permits have been secured and/or the use initiated, the use is subject to the Permit Duration and Renewal provisions set forth in the Ongoing 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 and the appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the applicant and the 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 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 (PRC) Section 5097.98. Violators shall be prosecuted in accordance with PRC Section 5097.99.