

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

Resolution Number 21-99

Record Number PLN-12280-CUP

Assessor Parcel Number: 208-111-028-000-000

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

WHEREAS, Rockaway Investments, LLC, submitted an application and evidence in support of approving a Conditional Use Permit for 1,400 sf full-sun outdoor and 9,948 sf outdoor light deprivation commercial cannabis cultivation with off-site processing; and

WHEREAS, the County Planning Division has reviewed the submitted application and supporting substantial 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 CEQA 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, and no new information of substantial importance that was not known and could not be known at the time was presented as described by Section 15162 (c) of the State CEQA Guideline; 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 (Record Number PLN-12280-CUP); and

WHEREAS, a public hearing was held on the matter before the Humboldt County Planning Commission on July 1, 2021.

DECISION

NOW, THEREFORE, be it resolved, determined, and ordered by the Humboldt County Planning Commission that the following findings be and are hereby made:

1. The Planning Commission considered the Addendum to the Mitigated Negative Declaration adopted for the Commercial Medical Marijuana Land Use Ordinance; and
2. The Planning Commission makes the findings in Attachment 2 of the Planning Division staff report for Record Number PLN-12280-CUP based on the submitted evidence; and
3. The Conditional Use Permit (Record Number PLN-12280-CUP) as recommended and conditioned in Attachment 1 is approved.

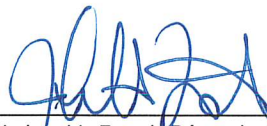
Adopted after review and consideration of all the evidence on July 1, 2021.

The motion was made by Commissioner Brian Mitchell and seconded by Commissioner Melanie McCavour and the following roll call vote:

AYES: Commissioners: Alan Bongio, Thomas Mulder, Noah Levy, Mike Newman, Peggy O'Neill, Brian Mitchell, Melanie McCavour.

DECISION: Motion carries 7/0

I, John H. 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 H. Ford, Director,
Planning and Building Department

ATTACHMENT 1

RECOMMENDED 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. The Applicant shall execute a Compliance Agreement with the Humboldt County Planning and Building Department detailing all necessary permits and infrastructure improvements described under Conditions of Approval #2 – 14. 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. The Applicant shall secure permits for all structures related to the cannabis cultivation and other commercial cannabis activity. A letter or similar communication from the Building Division verifying that all structures related to the cannabis cultivation are permitted will satisfy this condition.
3. The Applicant shall provide a survey of the property by a California licensed surveyor to verify that the requisite 30-foot cannabis cultivation setback and all zoning setbacks are satisfied.
4. Per the request of the Building Division, the applicant shall amend the Site Plan to show all grading, green houses, structures and RV trailers on subject parcel.
5. The Applicant shall install and utilize a water meter to keep track of irrigation use. Records from the meter shall be made available to the County upon request.
6. The Applicant shall have the access roads leading to the project site assessed by an experienced licensed Professional to ensure that the Best Management Practices are implemented, within sixty-days following the execution of this permit, to prevent sediment delivery to nearby watercourses/wet areas.
7. The Applicant shall have the solar arrays inspected for proper installation by a qualified professional. The inspection report shall be submitted to the Planning Department for review and approval.
8. The Applicant shall amend the Cultivation and Operations Plan and the Site Plan to incorporate fire-safe measures including fire extinguisher locations to prevent and/or reduce potential impacts to wildlife habitat caused by fire.
9. The Applicant shall implement all corrective actions detailed within the Water Resource Protection Plan developed for the parcel, prepared pursuant to Tier 2 enrollment under the North Coast Regional Water Quality Control Board (NCRWQCB) Cannabis Waste Discharge Regulatory Program. A letter or similar communication from the NCRWQCB verifying that all their requirements have been met will satisfy this condition.
10. The Applicant shall execute and file with the Humboldt County Planning and Building Department 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.
11. 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 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.
12. The applicant shall secure permits for all existing and proposed grading (including, but not limited to flats and pond) and structures (including, but not limited to: the cabin, shop and 5 cargo containers) related to the cannabis cultivation and other commercial cannabis activity. A letter or similar communication from the Building Division verifying that all structures and grading related to cannabis cultivation are permitted will satisfy this condition. No impervious floor shall be allowed for greenhouses.

13. 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.
14. The applicant shall contact the local fire service provider [Bridgeville Fire Protection District] and furnish written documentation from that agency of the available emergency response and fire suppression services . If emergency response and fire suppression services are not provided, the applicant shall cause to be recorded an "ACKNOWLEDGMENT OF NO AVAILABLE EMERGENCY RESPONSE AND FIRE SUPPRESSION SERVICES" for the parcel(s) on a form provided by the Humboldt County Planning Division
15. The applicant shall adhere to the recommendations of the Biological Assessment completed by Emerald Triangle Associates including but not limited to sensitive wildlife species recommendations, Norther Spotted Owl, migratory birds, Northern Red-legged Frog, and sensitive plant species.

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

1. 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.
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 MAUCRSA, 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. 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, as soon as such licenses become available.
5. Compliance with all statutes, regulations and requirements of the California State Water Resources Control Board and the Division of Water Rights, at a minimum to include a statement of diversion of surface water from a stream, river, underground stream, or other watercourse required by Water Code Section 5101, or other applicable permit, license, or registration, as applicable.
6. The applicant to submit evidence of enrollment into the State Cannabis Cultivation Discharge program by submitting copies of all documents filed with the State Water Resources Control Board, including, but not limited to, a Notice of Applicability. The applicant is required to adhere to and implement the requirements contained in the SWRCB's Cannabis Cultivation Policy, the General Order and the Notice of Applicability. A copy of the reporting 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 SWRCB.
7. The Applicant shall limit the operation to above ground cultivation. An archaeologist or cultural monitor will be required on-site during any ground disturbance, including geologic stability work, to monitor for any cultural resource artifacts that may be encountered.
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, Public Park, 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. 2015-0023, if applicable, or any substantially equivalent rule that may be subsequently adopted by the County of Humboldt or other responsible agency.
10. For cultivation area(s) for which no enrollment pursuant to NCRWQB Order No. 2015-0023 is required by that Order, comply with the standard conditions applicable to all Tier 1 dischargers.
11. Comply with the terms of any applicable Streambed Alteration (1600) Permit obtained from the California Department of Fish & Wildlife.
12. Comply with the terms of a less-than-3-acre conversion exemption or timberland conversion permit, approved by the California Department of Forestry and Fire Protection (CAL-FIRE), if applicable.
13. 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).
14. Applicant shall adhere to the recommendations of the Biological Assessment completed January 9, 2019 for the project parcel by O'Brien Biological Consultants.
15. 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. Should the results of the drawdown testing indicate the potential for the well to go dry or any other confounding factors regarding proximal wells, the County may require the Applicant to install additional water storage to mitigate excessive drawdown.
16. No lights, generators or fans are permitted by this permit until a scoping report for Northern Spotted Owl and Marbled Murrelet habitat is prepared by a biologist or forester with experience in the life history of the species, and approved by the Planning Director. 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. The Applicant shall implement avoidance measures including, but not limited to, the prohibition of generators, project lighting, dehumidifiers, and fans, including those used in ancillary structures (e.g. nurseries) during the breeding season (February 1 to July 9), each year.
18. The Applicant shall construct noise containment/dampening structures for all generators and fans on parcel; noise released shall be no more than 50 decibels measured from 100ft or edge of habitat whichever is closer. CDFW further requests, a noise attenuation monitoring and management plan for this activity within thirty-days, following execution of the final permit.
19. That artificial light used for cannabis cultivation operations (including ancillary nurseries) shall be fully contained within structures such that no light escapes (e.g., through automated blackout curtains) between 30 minutes prior to sunset and 30 minutes after sunrise to prevent disruption to crepuscular and nocturnal 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. CDFW further requests, a light attenuation monitoring and management plan for this activity within thirty-days, following execution of the final permit.
20. Timber removal is prohibited within 150ft of the designated cultivation sites.

21. All imported soil located onsite shall be fully contained and setback a minimum of 150 feet from watercourses and/or wet areas.
22. Generators and associated fuels shall be located outside of the floodplain and a minimum of 150 feet from streams (measured horizontally from the outer edge of the riparian or top of bank, whichever is greater). Generators and associated fuels shall be kept in secondary containment for capturing fuel leaks and located in a housing structure for noise attenuation.
23. All refuse shall be contained in wildlife proof containers, at all times, and relocated to an authorized waste management facility, in compliance with State and local laws, on a regular and on-going basis.
24. Refrain from the improper storage or use of any fuels, fertilizer, pesticide, fungicide, rodenticide, or herbicide.
25. This permit does not authorize the use of Anticoagulant rodenticides on the subject parcel. Anticoagulant rodenticides are prohibited.
26. Pay all applicable application and annual inspection fees.
27. Where surface water diversion provides any part of the water supply for irrigation of cannabis cultivation, permittee shall either: 1) forebear from any such diversion during the period from May 15th to October 31st of each year and establish on-site water storage for retention of wet season flows sufficient to provide adequate irrigation water for the size of the area to be cultivated, or 2) comply with the approved water management plan prepared by a qualified person such as a licensed engineer, hydrologist, or similar qualified professional, that establishes minimum water storage and forbearance period, if required, based upon local site conditions, or 3) adhere to the RWQCB approved Water Resources Protection Plan or other clearance issued by the agency. If the method of compliance changes during the term of the Conditional Use Permits, permittee shall notify the Planning and Building Department and furnish appropriate documentation of compliance with this standard.
28. At least one water meter shall be installed on the water line providing irrigation flow to the cultivation site. The water meter shall have the capacity to measure at least 100,000 gallons of flow before resetting. The water meter shall be used to measure the amount of water provided to the cultivation area during the forbearance period. The meter shall be installed at a point on the water line that provides an accurate measurement of the water used for irrigation. Household water use at the caretaker's residence shall be separately metered if required.
29. The noise produced by a generator used for cannabis drying, curing, and processing shall not be audible by humans at 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.
30. 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.

Performance Standards for Cultivation and Processing Operations

Pursuant to the MAUCRSA, 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."

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).

Cultivators engaged in processing shall comply with the following Processing Practices:

- I. Processing operations must be maintained in a clean and sanitary condition including all work surfaces and equipment.
- II. Processing operations must implement protocols which prevent processing contamination and mold and mildew growth on cannabis.
- III. Employees handling cannabis in processing operations must have access to facemasks and gloves in good operable condition as applicable to their job function.
- IV. Employees must wash hands sufficiently when handling cannabis or use gloves.

All persons hiring employees to engage in commercial processing of medical cannabis shall comply with the following Employee Safety Practices:

- A. Implement safety protocols and provide all employees with adequate safety training relevant to their specific job functions, which may include:
 - 1) Emergency action response planning as necessary;
 - 2) Employee accident reporting and investigation policies;
 - 3) Fire prevention;
 - 4) Hazard communication policies, including maintenance of material safety data sheets (MSDS);
 - 5) Materials handling policies;
 - 6) Job hazard analyses; and
 - 7) Personal protective equipment policies, including respiratory protection.
- B. Visibly post and maintain an emergency contact list which includes at a minimum:
 - 1) Operation manager contacts;
 - 2) Emergency responder contacts;
 - 3) Poison control contacts.
- C. 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.
- D. On site-housing provided to employees shall comply with all applicable federal, state, and local laws and regulations.

All cultivators shall comply with the approved Processing Plan as to the following:

- i. Processing Practices.
- ii. Location where processing will occur.
- iii. Number of employees, if any.
- iv. Employee Safety Practices.
- v. Toilet and handwashing facilities.
- vi. Plumbing and/or septic system and whether or not the system is capable of handling increased usage.
- vii. Drinking water for employees.
- viii. Plan to minimize impact from increased road use resulting from processing.
- ix. On-site housing, if any.

31. Permit Duration. The Permit shall be valid for one year from the effective date of approval, and on the anniversary date of such effective each year thereafter, unless an annual compliance inspection has been completed and the permit has been found to comply with all conditions of approval. In the event the inspection finds noncompliance, a written notification of shall be provided to the permit holder identifying the items not in compliance and the action the permit holder may take to cure the noncompliance. Failure to cure the noncompliance shall result in termination of the permit. The process of notification, re-inspection and appeal of any noncompliance determination shall be as set forth in sections 55.4.1.2.2 and 55.4.13 of the CMMLUO.

- 32. Permit renewals to comply with updated laws and regulations.** Permit renewal per ongoing requirement #19, 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.
- 33. 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 conformance with conditions review shall accompany the request. The request shall include the following information:
- (1) Identifying information for the new Owner(s) and management as required in an initial permit application;
 - (2) A written acknowledgment by the new Owner in accordance as required for the initial Permit application;
 - (3) The specific date on which the transfer is to occur; and
 - (4) Acknowledgement of full responsibility for complying with the existing Permit; and
 - (5) Execution of an Affidavit of Non-diversion of Medical Cannabis.
- 34. Modifications to the Facility.** Prior to making any modifications to a permitted facility, the permittee shall submit to the Planning Director a request for determination of County approvals, together with the appropriate fee. The request shall contain a description sufficiently detailed to allow the Planning Director to determine what permits and other approvals, are needed, and whether a modified Permit is required.
- 35. 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.
- 36.** All signage shall comply with Section 314-87.2 of the Humboldt County Code.
- 37.** The operation shall participate in the Medical Cannabis Track and Trace Program administered by the Humboldt County Agricultural Commissioner, when available.

Informational Notes:

1. If cultural resources are encountered during ground disturbing 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.

The Native American Heritage Commission (NAHC) can provide information regarding the appropriate Tribal point(s) of contact for a specific area; the NAHC can be reached at 916-653-4082. 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 NAHC will then be contacted by the Coroner to determine appropriate treatment of the remains pursuant to PRC 5097.98. Violators shall be prosecuted in accordance with PRC Section 5097.99

The applicant is ultimately responsible for ensuring compliance with this condition.

2. The applicant is responsible for receiving all necessary permits and/or approvals from other state and local agencies.
3. 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"); except where construction under a valid building permit or use in reliance on the permit has commenced prior to such anniversary date. Once initiated, the use is subject to the Permit Duration and Renewal provisions set forth in items #19 and #20 of the

On-Going Requirements /Development Restrictions, above. The period within which construction or use must be initially commenced may be extended as provided by Section 312-11.3 of the Humboldt County Code.