

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

Resolution Number: 23-

Record Number: PLN-12002-CUP

Assessor's Parcel Number: 522-031-007

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

WHEREAS, Watersong, LLC, submitted an application and evidence in support of approving a Conditional Use Permit for an existing 21,469 square feet (SF) outdoor cannabis cultivation operation, including 1,200 SF of ancillary propagation. Water sourced for cultivation from a permitted, confined aquifer well. There are three (3) 3,500-gallon hard-sided tanks totaling 10,500 gallons of water storage. Estimated annual water use is 135,000 gallons. Outdoor cultivation occurs in the central portion of the parcel consisting of two (2) cultivation areas. Processing, consisting of drying and curing activities, occurs on-site in existing shipping containers. All other processing is done offsite by a 3rd party licensed processing company. A maximum of three (3) employees may be utilized during peak operations. Power is provided by three (3) generators and solar power is used for the well pump; 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 November 2, 2023, 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 an existing 21,469 square feet (SF) outdoor cannabis cultivation operation, including 1,200 SF of ancillary propagation. Water sourced for cultivation from a permitted, confined aquifer well. Three (3) 3,500 gallon hard tanks totaling 10,500 gallons of water storage that is filled by the well. Estimated annual water use is 135,000 gallons. Outdoor cultivation occurs in the southeastern portion of the parcel consisting of two (2) cultivation areas. Processing, including drying and curing activities, occurs on-site in existing Shipping Containers. All other processing is done offsite by a 3rd party processing company. A maximum of three (3) employees may be utilized during peak operations. Power is provided by three (3) generators and solar power is used for the Well Pump. Outdoor cannabis cultivation activities anticipate one (1) harvest annually. Access to the operation is gated and

locked, and trail cameras are placed along the gate, various buildings on the parcel, and cultivation areas. Additional security from a 3rd party neighborhood patrol service is in use during the months of September to November.

EVIDENCE: a) Project File: PLN-12002-CUP

2. FINDING: **CEQA.** The requirements of the California Environmental Quality Act have been complied with. The Humboldt County Planning Commission has considered 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 and the Addendum to that document prepared for the Watersong 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) A Water Resource Protection Plan (WRPP; WDID:1_12CC47126) was prepared by Timberland Resource Consultants to fulfill the State Water Resources Quality Control Board Order No. 2015-0023. Within 60 days of the effective date, the applicant shall submit a Site Management Plan (SMP) developed for the project parcel. The applicant shall submit the SMP to the State Water Resources Control Board (SWRCB) Cannabis Policy and General Order WQ 2019-0001-DWQ General Waste Discharge Requirements for Dischargers of Waste Associated with the Cannabis Cultivation Activities (General Order). The applicant shall submit a letter or similar communication from the SWCRB verifying that all their requirements have been met will satisfy this condition.
- d) A *Preliminary Biological Resource Assessment for APN 522-031-007*, prepared by TransTerra Consulting on May 2020 (Attachment 3), analyzed biological resources based from on the field observations (conducted 5/4/20) and assessed from search of CNDDDB biological resources database. Results from database and field survey showed minimal suitable habitat on-site for plant species with a moderate or high potential to occur and no evidence for rare plant species was detected in the project area. Further results of the CNDDDB database showed no special-status species within a 1-mile radius. CNDDDB database found within a 3-mile a suitable habitat for special status species. No other special-status species have been documented on the project site within a 1-mile radius. The nearest known Northern spotted owl (NSO) activity center greater than 1.16-mile to the west of the cultivation site. The last positive observation was made in 2000 with only negative observations following in the CNDDDB database up to 2001; therefore, the cultivation site may not provide suitable foraging habitat. 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. The project is also required to obtain permits from the NCUAQMD, as applicable.

Additional conditions of approval require the applicant to implement light and noise attenuation measures, refrain from using synthetic netting, ensure refuse is contained in wildlife proof storage, and refrain from using anticoagulant rodenticides to further protect wildlife. Further, due to the on-site pond, the applicant is required to prepare and implement a Bullfrog Management Plan. As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively impact NSO or other sensitive species.

- e) Based on review of historic aerial imagery dating back to 2004, it appears that the subject property contained a large open area within the southcentral corner portion of the site; however, it appears that a small amount of timber conversion has occurred onsite in order to accommodate the existing outdoor cultivation areas, and appears to have occurred between 2012 and 2014, 2014 and 2015. No timber conversion appears to have occurred after 2015.

Per a settlement and documentation (Attachment) with CAL FIRE found the Applicant to be in violation of the following: PRC 4581 Necessity of a Timber Harvest Plan; Public Resources Code (PRC) 4571(a) Necessity of License, 14CCR 1103.1(a) Prohibited Activity – Conversion Activities without Conversion Permit; 14CCR 923.5(b) Landing Construction; and 14CCR 923.5(c) – Waste Organic Material shall not be buried in landing fills. During the site inspection for potential illegal conversion of timberland. The CAL FIRE inspection (1-14NON-019-HUM) found an area approximately 2 acres in size was observed to have been cleared. The conversion of timberland was conducted without a Timber Harvest Plan, Timber Conversion Permit, or a valid timber operator's license. The Applicant settled the violation with CAL FIRE in February 2015. Per the CAL FIRE inspection report (1-14NON-019-HUM) the completion of remediation work specified by the settlement between the Applicant and CAL FIRE has been completed. No further obligations exist related to the remediation work agreed between CAL FIRE and the Applicant. The report specifies that an approved valid harvest document is required prior to commencement of any future commercial timber operations.

- f) A Cultural Resources Investigation report was prepared in April 2021 by Archaeological Research and Supply Company, which did not identify any sensitive resources within the study area. However, as there is always the possibility of the inadvertent discovery of buried archaeological resources

during ground disturbing activities with project implementation, Inadvertent Discoveries Protocol is recommended, by the Cultural Resources report, which has been included as an ongoing condition of approval.

- g) Access to the site is by way of a private access via Unnamed Access Road off of Old Three Creeks Road accessed from State Route 299 (SR 299). A Road Evaluation was prepared by the Applicant (Dominic Gabriel) in November 2019 for a 2.0 mile segment of Old Three Creeks Road accessed directly off of SR 299 and the 2.1 mile segment of Old Three Creeks Road to the private access driveway. The Road Evaluation indicated the Old Three Creeks Road, and the Unnamed Access Road is maintained privately. According to referral comments from the Department of Public Works, State Highway 299 to Old Three Creeks Road (P.M. 2.8; End of County maintained) is a County maintained road. Old Three Creeks Road is included on the Approved List of County Maintained Roads that meet Road Category 4 standards for Cannabis Projects. The access road to the subject parcel is past the county maintained road. The Road Evaluation Report indicated the road segments are developed to the equivalent of a road Category 4 standard and are adequate for the proposed use. The submitted road evaluation included sufficient photographic evidence to verify the roadway condition as described, including roadway width and line of sight.

Due to the number of cultivation projects along Unnamed Access Road and Old Three Creeks Road, it is recommended by the Planning Department, the applicant shall take steps to form and implement a Road Maintenance Association. The project is located past the County maintained portion of Old Three Creeks Road. The subject project shall take the necessary to 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 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. If the Applicant is currently enrolled in a Road Maintenance Association the project is conditioned to submit proof of enrollment and maintain enrollment for the life of the project.

As previously noted, there will be a maximum of three (3) people onsite during peak operations. Therefore, a significant increase in traffic is not expected under the project.

FINDINGS FOR CONDITIONAL USE 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) According to Section 4.8 of the Humboldt County General Plan, Table 4-G, general agriculture is a use type permitted in the Timberland (T) land use designation. The proposed cannabis cultivation, an agricultural product, is within land planned and zoned for Timber Production Zone (TPZ) uses. The use of old logging flats for cannabis cultivation 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 purposes of the existing Timber Production Zone (TPZ) in which the site is located.
- EVIDENCE:** a) The Timber Production Zone (TPZ) is intended to be applied to areas of the County in which primary uses include the growing and harvesting of timber and timber production facilities, including portable processing equipment. Compatible uses other than the direct growing, harvesting, and portable processing of timber include grazing and other agricultural uses.
- b) All general agricultural uses are principally permitted in the Timber Production Zone (TPZ).
- 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 21,469 square feet of outdoor cultivation on a 160.50-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 known as APN 522-031-007 is comprised of one separate patent parcel dated October 7, 1904, as recorded in Assessor's Map Book 19 page 90.
- c) Water for irrigation is provided by a permitted groundwater well located in the eastern portion of the parcel to the east of the cultivation areas. Additional water storage onsite includes three (3) existing 3,500-gallon in high-density polyethylene (HDPE) water storage tanks for a total of 10,500 gallons of water storage. Estimated annual water usage is 135,500-gallons (6.3 gal/SF). The Well Completion Report (discussed below), the well is estimated to yield approximately 4 gallons of water per minute and produce up to 21,600 gallons per day. The water yield from the well is sufficient to support the project. The well yield per day is 21,600-gallons and the 180

days of flowering equates to approximately 3,888,000-gallons that can be yielded. Annual water use for the project is 130,00-gallons.

A Hydrological Report (Hydrologic Isolation of Well WCR2013-008234 (Legacy well #e0186272) From Surface Waters, Old Three Creeks Road, Berry Summit, APN: 522-031-007) was prepared by Lindberg Geologic Consulting in October 2022 (Attachment 3) to assess the well's potential for hydrologic connectivity with any adjacent wetlands and surface waters, and if pumping the well could affect surface waters in nearby watercourse. Per the Report, the findings concluded the existing permitted well on the subject parcel has a low likelihood of being hydrologically connected to nearby surface waters in any manner that could affect adjacent wetlands, surface waters, springs, and/or nearby wells in the vicinity. The report states Humboldt County's WebGIS shows four (4) watercourses within one (1) mile of the well site. Approximately, 1,600 feet to the northwest is one (1) ephemeral tributary of Minor Creek, and approximately 1,750 feet to the southwest is a second ephemeral tributary of Minor Creek. Southeast of the subject well approximately 3,100 feet is an ephemeral tributary of Three Creeks. The head of (perennial) Supply Creek is more than 3,500 feet east of the subject well. According to the Hydrological Report, the well and Site Plan Map is located in the southwestern corner of the parcel. The well elevation is approximately 3,700 feet. The subject well is only cased and screened to 160 feet below the ground surface (bgs) and only cased and screened to 130 bgs. Therefore, the elevation of the bottom of the borehole is 3,540 feet, and the bottom of the well screen is 3,570 feet bgs. The Well Completion Report (On file), the well is 160 feet deep and drilled through Silty Clay Reddish Brown, Weathered Shist, and Highly Fractured Basalt. The report states the well has a low potential of having any direct connection to surface waters. The first water was encountered at 40 feet. In conclusion, per Well Completion Report, the well is estimated to yield approximately 4 gallons of water per minute and produce up to 21,600 gallons per day, as discussed previously. As such, use of the well does not require additional water rights from the State Water Resources Control Board and is not subject to forbearance or water storage requirements. Conditions of approval also require the applicant to monitor water use from the well and water storage tanks annually to demonstrate there is sufficient water available to meet operational needs.

- d) Access to the site is by way of a private access via Unnamed Access Road off of Old Three Creeks Road accessed from State Route 299 (SR 299). A Road Evaluation was prepared by the Applicant (Dominic Gabriel) in November 2019 for a 2.0 mile segment of Old Three Creeks Road accessed directly off of SR 299 and the 2.1 mile segment of Old Three Creeks Road to the private access driveway. The Road Evaluation indicated the Old Three Creeks Road, and the Unnamed Access Road is maintained privately. According to referral comments from the Department of Public Works, State Highway 299 to Old Three Creeks Road (P.M. 2.8; End of County maintained) is a County maintained road. Old Three Creeks Road is included on the Approved List of County Maintained Roads that meet Road

Category 4 standards for Cannabis Projects. The access road to the subject parcel is past the county maintained road. The Road Evaluation Report indicated the road segments are developed to the equivalent of a road Category 4 standard and are adequate for the proposed use. The submitted road evaluation included sufficient photographic evidence to verify the roadway condition as described, including roadway width and line of sight.

Due to the number of cultivation projects along Unnamed Access Road and Old Three Creeks Road, it is recommended by the Planning Department, the applicant shall take steps to form and implement a Road Maintenance Association. The project is located past the County maintained portion of Old Three Creeks Road. The subject project shall take the necessary steps to 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. If the Applicant is currently enrolled in a Road Maintenance Association the project is conditioned to submit proof of enrollment and maintain enrollment for the life of the project.

As previously noted, there will be a maximum of three (3) people onsite during peak operations. Therefore, a significant increase in traffic is not expected under the project.

- e) The slope of the land where cannabis will be cultivated is less than 18%, as per the Water Resource Protection Plan (WRPP; WDID:1_1CC417126) prepared by Timberland Resource Consultants in January 2017.
- f) Based on review of historic aerial imagery dating back to 2004, it appears that the subject property contained a large open area within the southcentral corner portion of the site; however, it appears that a small amount of timber conversion has occurred onsite in order to accommodate the existing outdoor cultivation areas, and appears to have occurred between 2012 and 2014, 2014 and 2015.

Per a settlement and documentation (Attachment) with CAL FIRE found the Applicant to be in violation of the following: PRC 4581 Necessity of a Timber Harvest Plan; Public Resources Code (PRC) 4571(a) Necessity of License, 14CCR 1103.1(a) Prohibited Activity – Conversion Activities without Conversion Permit; 14CCR 923.5(b) Landing Construction; and 14CCR 923.5(c) – Waste Organic Material shall not be buried in landing fills. During the site inspection for potential illegal conversion of timberland. The CAL FIRE inspection (1-14NON-019-HUM) found an area approximately 2 acres in size was observed to have been cleared. The conversion of timberland was conducted without a Timber Harvest Plan, Timber Conversion Permit, or a valid timber operator's license. The

Applicant settled the violation with CAL FIRE in February 2015. Per the CAL FIRE inspection report (1-14NON-019-HUM) the completion of remediation work specified by the settlement between the Applicant and CAL FIRE has been completed. No further obligations exist related to the remediation work agreed between CAL FIRE and the Applicant. The report specifies that an approved valid harvest document is required prior to commencement of any commercial timber operations.

- 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 21,469 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) Access to the site is by way of a private access via Unnamed Access Road off of Old Three Creeks Road accessed from State Route 299 (SR 299). A Road Evaluation was prepared by the Applicant (Dominic Gabriel) in November 2019 for a 2.0-mile segment of Old Three Creeks Road accessed directly off of SR 299 and the 2.1 mile segment of Old Three Creeks Road to the private access driveway. The Road Evaluation indicated the Old Three Creeks Road, and the Unnamed Access Road is maintained privately. According to referral comments from the Department of Public Works, State Highway 299 to Old Three Creeks Road (P.M. 2.8; End of County maintained) is a County maintained road. Old Three Creeks Road is included on the Approved List of County Maintained Roads that meet Road Category 4 standards for Cannabis Projects. The access road to the subject parcel is past the county maintained road. The Road Evaluation Report indicated the road segments are developed to the equivalent of a road Category 4 standard and are adequate for the proposed use. The submitted road evaluation included sufficient photographic evidence to verify the roadway condition as described, including roadway width and line of sight. Therefore, the site is located on road that has been certified 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) Water for irrigation water is provided by a permitted groundwater well located in the eastern portion of the parcel to the east of the cultivation site. The site also contains three (3) existing 3,500-gallon in high-density polyethylene (HDPE) water storage tanks for a total of 10,500 gallons of water storage. Irrigation water will be applied by hand watering, but a timed, metered, drip irrigation system is proposed to minimize overwatering and reduce the risk of irrigation runoff. A Hydrological Report (Hydrologic Isolation of Well WCR2013-008234 (Legacy well #e0186272) From Surface Waters, Old Three Creeks Road, Berry Summit, APN: 522-031-007) was prepared by Lindberg Geologic Consulting in October 2022 (Attachment 3) to assess the well's potential for hydrologic connectivity with any adjacent wetlands and surface waters, and if pumping the well could affect surface waters in nearby watercourse. Per the Report, the findings concluded the existing permitted well on the subject parcel has a low likelihood of being hydrologically connected to nearby surface waters in any manner that could affect adjacent wetlands, surface waters, springs, and/or nearby wells in the vicinity. 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.
- e) The Planning Commission finds that the generator use associated with the project may increase potential impacts of the project associated with greenhouse gases. To ensure impacts associated with greenhouse gases, the Planning Commission added the condition of approval, including preparation and approval of an energy plan that requires the applicant to use 80% renewable energy by the end of 2026. With the addition of the condition, the Planning Commission found the project will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.

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 parcel was not included in the housing inventory of Humboldt County's 2019 Housing Element and is currently developed with one housing unit. The approval of cannabis cultivation on this parcel will not conflict with the ability for the existing 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 located in the Redwood Creek Planning Watershed, which under Resolution 18-43 is limited to 141 permits and 49 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 13 permits and the total approved acres would be 3.7 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 for Watersong, 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 **November 2, 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