

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

Resolution Number 23-

Record Number PLN-12651-SP

Assessor's Parcel Number: 211-372-006

Resolution by the Planning Commission of the County of Humboldt certifying compliance with the California Environmental Quality Act and conditionally approving the Mayers Flat Farm, LLC, Special Permit.

WHEREAS, Mayers Flat Farm, LLC, submitted an application and evidence in support of approving a Special Permit for the expansion of an ongoing 8,750-square-foot (SF) light-deprivation outdoor cannabis operation to a total buildout of 41,300 SF (32,550 SF expansion), with 3,900 SF of appurtenant nursery propagation and drying activities; and

WHEREAS, the County as lead agency, prepared an Addendum to the Environmental Impact Report (EIR) prepared for the Commercial Cannabis Land Use Ordinance (CCLUO) adopted by the Humboldt County Board of Supervisors on May 8, 2018. The proposed project does not present substantial changes that would require major revisions to the Environmental Impact Report. 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 the California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, the Humboldt County Planning Commission held a public hearing on April 20, 2023 and discussed the application for the Special Permits 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 Special Permit to expand an existing 8,750-square-foot (SF) cannabis cultivation operation consisting of two light-deprivation greenhouses to 41,300 SF of outdoor cultivation in 11 light-deprivation greenhouses situated on less than 20 percent of the prime agricultural soils on the 80-acre parcel. Ancillary propagation would occur in a proposed 3,900-SF greenhouse. Water is sourced from a 350,000-gallon onsite rainwater catchment pond with excess flows would be pumped to a collection of 40,000 gallons of proposed tank storage. Water usage is estimated to be approximately 379,444 gallons per growing season at full buildout (9.2 gallons/SF/year). Existing water storage of 364,100 gallons would be expanded to 400,100 gallons at full project buildout. Drying of cannabis would continue onsite in an existing outbuilding using dehumidifiers and fans. Offsite processing in a licensed facility is proposed. Up to three independent contract employees are anticipated during peak operations. Power is provided by a 25-kilowatt (kW) (and backup 45-killowatt) diesel generator as the applicant finalizes plans to install a solar array; no expansion is allowed until the project obtains 100 percent of its power needs through alternative energy. A Special Permit is also required for the buffer reduction of the storage pond located within delineated wetland buffers.

EVIDENCE: a) Project File: PLN-12651-SP

- 2. FINDING:** **CEQA.** CEQA requirements have been complied with. The Humboldt County Zoning Administrator has considered the Addendum to and the EIR prepared for the CCLUO adopted by the Humboldt County Board of Supervisors on May 8, 2018.

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 EIR. 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 Site Management Plan (SMP) was prepared by Timberland Resource Consultants in February 2020 in accordance with the State Water Resources Control Board (SWRCB) Cannabis Cultivation Policy (Order WQ 2019-0001-DWQ) as a Tier 1, Low Risk project; the plan was revised by ETA Humboldt to show a third historic cultivation area to be partially used for the proposed expansion. Abiding by the recommended best practicable treatment and control measures in the SMP and any subsequent SWRCB requirements are ongoing conditions of approval.
- d) An Energy Generation and Consumption Plan details that there is currently a small amount (460 watts) of supplemental lighting in the propagation greenhouse in use 5 months of the year (February through June). Propagation greenhouse lighting, water and air pumps, atomizer (for foliage feeding and pest/disease), fans, power tools, surge protectors, dehumidifiers, and all electrical supplies and equipment, as well as all domestic power in the residence, is currently sourced from one 25-kW diesel generator and an additional 45-kW generator used for emergency back-up purposes. The applicant is proposing to add a photovoltaic solar system with 16 25-watt photovoltaic panels and 16 deep-cycle batteries to completely phase out generator use as a primary power supply; no cultivation expansion is allowed until the applicant can demonstrate that 100 percent of energy demand for all the proposed new cultivation will be met using alternative energy sources. In the interim, 80 percent of the existing cultivation must be met by renewable sources within 1 year as a condition of approval.
- e) A Prime Agricultural Soil Assessment of the grassland meadow was prepared by Dirty Business Soil in May 2018 that mapped 1 acre of prime agricultural soil across four different locations, including a portion of the existing cultivation area. In accordance with CCLUO Section 55.4.6.4.3, the cumulative area of any Cannabis Cultivation Site located in the four areas identified as having Prime Agricultural Soil does not exceed 20 percent of the area of total Prime Agricultural Soil on the parcel.
- f) The source of irrigation water for this project is rainwater stored in an approximately 350,000-gallon capacity pond onsite with excess flows diverted to 40,000 gallons of proposed storage and 11,100 of existing storage, as detailed in the Revised Water and Irrigation Plan was prepared by ETA Humboldt in 2021. The pond is detailed in a Grading, Drainage, and Erosion Control Plan prepared by Omsberg & Preston (engineers) in October 2018. Water usage is estimated to be approximately 379,444 gallons per growing season at full buildout (9.2 gallons/SF/year).
- g) Approval from the California Department of Fish and Wildlife (CDFW) was obtained by the applicant through an Operation of Law letter. The approval allows for installation of a minimum 18-inch culvert in Crossing #1 and on the road blocking drainage of a wetland and the associated measures designed to protect fish, wildlife, and plant resources. The two retired water bladders in or adjacent to delineated wetlands below the pond are to be removed as a condition of approval upon recommendation following a site visit by the North Coast Regional Water Quality Control Board (RWQCB) and

CDFW in January 2019 and by a follow-up visit by the North Coast RWQCB in March 2019 and as described in the SMP referenced above (2.c).

- h) A Biological Assessment was prepared for the project following a single January 2020 field visit by a wildlife biologist with O'Brien Biological Consultants in accordance with **CCLUO Mitigation Measure 3.4-1a**. No trees are proposed to be removed by the project. The nearest northern spotted owl (NSO) activity center is located approximately 0.48 miles east of the nearest cultivation area, with critical habitat located approximately 4.1 miles from the site. Lands south of the cultivation site and surrounding the parcel are heavily forested with appropriately aged coniferous forest; thus, there is high potential for NSO to occur on or near the property. The nearest mapped critical habitat for marbled murrelets is approximately 1.7 miles to the west, and there is likely no potential nesting habitat located on the parcel's assessment area. The Biological Assessment concluded that there is a potential significant impact to NSO nesting habitat from the cannabis cultivation and recommended surveys be conducted to determine potential presence on the property prior to site expansion. A Northern Spotted Owl assessment report was prepared by Troy Leopardo, a qualified NSO biologist which determined that no NSO habitat would be removed or affected as a result of the proposed project. The assessment includes the results of a limited survey of the area surrounding the project site that occurred in April of 2022 and found no presence of NSO and no evidence of presence within 0.25 miles. The assessment further concluded that there is no likelihood of adverse impacts to NSO as a result of the proposed project, particularly if the noise attention measures of the CCLUO are adhered to. Recommendations for the protection of biological resources are included in the conditions of approval, which include, but are not limited to, housing generators inside insulated enclosures to muffle noise and adhere to noise thresholds of the CCLUO (≤ 50 decibels of maximum noise exposure at 100 feet from noise source or to the edge of potential habitat), conducting nesting bird surveys prior to vegetation removal or habitat alteration planned within the nesting season, and implementing invasive plant species controls. Furthermore, the project is conditioned to ensure refuse is contained in wildlife proof storage and refrain from using anticoagulant rodenticides to further protect wildlife.
- i) A protocol-level vegetation survey report and a wetland delineation report were prepared by Kyle Wear, a botanical consultant, in October 2019 and 2021, respectively, in accordance with **CCLUO Mitigation Measures 3.4-3a, -3b, -4, and -5**. Although member species of documented Sensitive Natural Communities were identified (e.g., California oatgrass [*Danthonia californica*] and blue wildrye [*Elymus glaucus*]), their abundance was below membership rules. All plants were identified to the taxonomic level necessary to determine whether they are special status. These studies concluded the parcel contains coniferous forest, grasslands, and seasonal wetlands and that most of the proposed cultivation is on existing cultivation footprints or in previously graded areas. The additional grading necessary for the cultivation expansion was estimated to impact approximately 17,630 SF (0.40 acre) of grassland not considered a Sensitive Natural Community. Wetlands and wetland setbacks are shown on the revised 2021 Site Plan.
- j) A Cultural Resources Investigation Report was carried out by Arsenault & Associates in 2018 and 2020. Per the report, an outreach email was sent to the Bear River Band of the Rohnerville Rancheria and "no relevant or important response to the outreach was received." The report concluded that the proposed project will not result in any adverse changes to historical or archaeological resources, recommended Inadvertent Discoveries

Protocol, and noted that if engineering plans change or additional ground-disturbing activities were necessary, Mark Arsenault should be contacted for further information. Subsequently, he was contacted to perform a secondary survey of the expanded project area to the north to provide cultural resources clearance for an additional impact area associated with the proposed 3,900-SF propagation greenhouse. The secondary survey was completed on November 26, 2020, and did not identify any cultural resources within the additional impact area or 600-foot buffer. Additionally, the report concluded that the character of the secondary study area was consistent with that described in the original report. Ongoing conditions of approval are incorporated regarding the Inadvertent Discoveries Protocol to protect cultural resources.

- k) Access to the site is via a private roadway off of Dyerville Loop Road, a County maintained road. A self-certified Road Evaluation Report (Form A) for the 1.0-mile access route was prepared by Antonio Petrushevski, and a photo-documented report was prepared by ETA Humboldt in January 2021. The report indicates the roadway can accommodate increased traffic given the 17 documented turnouts, the rocky surface, and the 16-to20-foot road widths. In addition to the self-certified RER and the photo-documented report by ETA, a Road Evaluation Report prepared for an adjacent cannabis operation that utilizes the same roadway (PLN-12601-CUP) was prepared by a licensed engineer, which found that the private roadway is functionally equivalent to a Road Category 4. Recommended conditions of approval from Public Works' referral response have been incorporated into the conditions of approval.

FINDINGS FOR 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 an allowable use type permitted in the Timberland (T) land use designation. The proposed cannabis cultivation, an agricultural product, is within open grassland areas surrounded by forest planned and zoned for general agricultural purposes and processing of agricultural products, consistent with the use of Open Space land for managed production of resources. The use of timberland 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.
- b) The proposed project is consistent Conservation and Open Space Element Biological Resources as evidenced by compliance with the following polices and standards:
 - 1.) Streamside Management Areas (SMAs) and Wetland Identification (BR-P5, P6, P7): There are several mapped SMAs around ephemeral streams draining to the South of the parcel and around a delineated wetland. All development associated with the project is located outside of SMA and required setbacks apart from an existing rain catchment pond located within the SMA of the delineated wetland. A Special Permit is required for this setback reduction and abiding by the erosion prevention and water quality protection recommendations in the project's SMP are made a condition of approval. The pond is as close as 10 feet to a small ephemeral wetland and 25 feet from a second small

wetland. The remaining development is a minimum of 50 feet from all wetland areas and in most cases over 100 feet or more. The construction of the pond has allowed for the applicant to remove the reliance on a stream diversion for irrigation purposes and is therefore a benefit to the overall Streamside Management Areas associated with the property. Biological and botanical resource surveys have been submitted which demonstrate that the project will likely have no adverse impact on Streamside management and Wetland areas.

- ii.) Biological Resource Maps (BR-P11): Northern Spotted Owl have been observed historically within one mile, with the closest NSO activity center being approximately 0.48 miles east of the nearest cultivation area, with Critical Habitat located approximately 4.1 miles from the site. Lands south of the cultivation site and surrounding the parcel are heavily forested with appropriately aged coniferous forest, thus there is high potential for northern spotted owl to occur on or near the property. The nearest mapped critical habitat for Marbled Murrelets is approximately 1.7-miles to the west and there is likely no potential nesting habitat located on the parcel's assessment area. The Biological Assessment concluded that there is a potential noise or light impact on spotted owl nesting habitat from the cannabis cultivation operations and recommended surveys be conducted to determine potential presence on the property beginning in 2020. Thus, the applicant obtained a Northern Spotted Owl (NSO) assessment from a qualified NSO expert that identified no presence within 0.25 miles and further documented that the proposed project would have no adverse impacts on NSO provided that noise and light attenuation measures are adhered to. The proposed project is for outdoor only, with limited light utilized for propagation activities, and power is conditioned to be from renewable energy. Additionally, generators that may be utilized for emergency purposes only will be required to be housed in noise containment structures to ensure noise does not exceed decibel thresholds set by the USFWS, CDFW and Humboldt County.
- c) The goals and policies of the Conservation and Open Space Cultural Resources have been complied with based on the referral of the project to the Northwest Information Center (NWIC), the Bear River Band of Rohnerville Rancheria, the Blue Lake Rancheria, and the Wiyot Tribe. An archeological survey of the subject parcels was made in May 2018 and an Addendum prepared in December 2020, by Mark Arsenault, MA, RPA. The report concluded that the proposed project will not result in any adverse changes to historical or archaeological resources, recommended Inadvertent Discoveries Protocol and noted that if engineering plans change or additional ground disturbing activities were necessary, to contact Mark Arsenault for further information. The Tribal Historic Preservation Officers (THPO's) have reviewed the reports and concurred with the findings and recommendations.
- d) The project is consistent with the Conservation and Open Space Scenic Resources policies as the only applicable policy is related to restricting light and glare. The project will comply with the CMMLUO and CCLUO which require all-night lighting be completely shielded in compliance with International Dark Sky Standards.
- e) The project is consistent with the Water Resources Element through

compliance with the following goals and policies:

- I. Sustainable Management (WR-P1). The project does not utilize diversion from a surface water source, as water will come from rainwater stored in an approximately 350,000-gallon capacity pond onsite. Excess rainfall collection will be diverted to hard tank storage.
- II. Project Design (WR-P12). The project will not detract from the function of rivers, streams, ponds, wetlands or their setback areas based on the evidence provided and the required measures in the SMP and LSAA. The project includes the rainwater catchment pond which enables the decommissioning of a surface water diversion which thereby enhances the function of streams on and off the property.
- III. Rain Catchment Systems (WR-P20). Rainwater catchment is the major component of the project, providing approximately 350,000 gallons of the 379,444 gallons of estimated annual water use. An additional 40,000 gallons of hard tank storage are proposed at project build out in order to capture the excess rainfall intercepted by the rain catchment pond.

4. FINDING

The proposed development is consistent with the purposes of the existing Agriculture Exclusive (AE-Zone) in which the site development is located. The forested area of the parcel is zoned Timber Production Zone (TPZ) which allows accessory agricultural uses and structures as principal permitted uses.

EVIDENCE

- a) The AE-Zone is applied to areas of the County intended to be applied in fertile areas in which agriculture is and should be the desirable predominant use.
- b) All general agricultural uses are principally permitted in the AE Zone. Commercial cannabis cultivation is specifically allowed in the AE Zoning designation subject to approval of the appropriate permit as required by the CMLUO and CCLUO.
- c) CCLUO section 55.4.6.1.2(b) allows cultivation of up to 43,560 SF of cultivation area on a parcel over 10 acres subject to approval of a Special Permit. The application for 41,300-SF total outdoor cultivation, of which 8,750 SF is existing, as well as 3,900 SF of appurtenant nursery space, the expansion of which would only occur on AE zoned area, on an 80-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 CCLUO Provisions of the Zoning Ordinance.

EVIDENCE

- a) The CCLUO allows existing and new cannabis cultivation activities, onsite processing, and nurseries to be principally permitted in areas zoned AE (HCC 314-55.4.6.1) and accommodates pre-existing cultivation activities in areas zoned TPZ (HCC 314-55.4.6.5).
- b) The parcel was created in compliance with all applicable state and local subdivision regulations, as it was created through government patent as recorded in Book 12 of patents, Page 510, Humboldt County Records.
- c) The project will obtain water from a non-diversionary water source, a 350,000-gallon rain catchment pond. Additional water storage is proposed to bring the total of water storage available on the parcel to 400,100 gallons.

- d) Access to the site is via a private driveway off of Dyerville Loop Road via Avenue of the Giants Road, a paved, Category 4 County-maintained roadway. A self-certified Road Evaluation Report (Form A) for the 1.0-mile access route was prepared by Antonio Petrushevski, and a photo-documented report was prepared by ETA Humboldt in January 2021. The report indicates the roadway can accommodate increased traffic given the 17 documented turnouts, the rocked surface, and the 16-to-20-foot road widths. These reports are supported further by a RER submitted by a licensed engineer on an adjacent project, PLN-12601-CUP, that identifies the road as the functional equivalent of a Road Category 4.
- e) Electricity is conditioned to be exclusively provided by a renewable energy source prior to expansion of the cultivation operation, and an energy plan demonstrating sufficient solar power is required within 3 years of project approval.
- f) The slope of the land where cannabis will be cultivated is less than 15 percent.
- g) The cultivation of cannabis will not result in the net conversion of timberland. No tree removal is proposed by the project.
- h) The location of the cultivation complies with all setbacks required in Section 314-55.4.6.4.4. It is more than 30 feet from any property line, more than 300 feet from any offsite residence and more than 600 feet from any school, church, public park, or tribal cultural resource.
- i) A Prime Agricultural Soil Assessment of the grassland meadow was prepared by Dirty Business Soil in May 2018 that mapped 1 acre of prime agricultural soil across four different locations, including a portion of the existing cultivation area. The revised site plan dated 11/22/21 indicates the prime agricultural soil locations relative to the existing and proposed cultivation areas and shows that less than 20 percent of the prime agricultural soils will be used for cannabis cultivation.
- j) A Biological Assessment, Botanical Assessment, and Wetland delineation were prepared for the project. No Sensitive Natural Community will be impacted by the proposed project expansion. A qualified biologist familiar with the life history of the NSO has conducted a Disturbance and Habitat Modification Assessment and found that the project would not impact NSO habitat and would not cause adverse impacts to NSO.

6. FINDING

The cultivation of 41,300 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 via Elk Creek Road, a private driveway off of Dyerville Loop Road via Avenue of the Giants Road. Dyerville Loop Road is a paved, Category 4 County-maintained roadway. A self-certified Road Evaluation Report (Form A) for the 1.0-mile access route was prepared by Antonio Petrushevski, and a photo-documented report was prepared by ETA Humboldt in January 2021. The report indicates the roadway can accommodate increased traffic given the 17 documented turnouts, the rocked surface, and the 16-to-20-foot road widths. This documentation is further supported by an RER that was prepared by a licensed engineer for an adjacent cannabis project, which found the road to be the functional equivalent to a Road Category 4
- b) The site is in a rural part of the County where the typical parcel size is over 80 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 that 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 sizes in the area.

- c) The location of the proposed cannabis cultivation is more than 300 feet from the nearest offsite residence.
- d) The primary source of irrigation water for this project is rainwater stored in an existing 350,000-gallon capacity pond with excess flows would be pumped to a collection of 40,000 gallons of proposed tank storage. Estimated annual water usage is 379,444 gallons (9.2 gallons/SF/year) with peak demand occurring in July and August when estimated demand is 53,500 gallons per month.
- e) 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 significantly affected. The applicant has submitted a Site Management Plan for controlling runoff and protecting water quality to the County and the North Coast Regional Water Quality Control Board.

7. FINDING

The proposed development does not reduce the residential density for any parcel below that was utilized by the Department of Housing and Community Development in determining compliance with housing element law.

EVIDENCE

The parcel was not included in the housing inventory of Humboldt County's 2019 Housing Element, but does have the potential to support one housing unit. The approval of cannabis cultivation on this parcel will not conflict with the ability for a residence to be constructed on this parcel.

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 that may be approved in each of the County's Planning Watersheds.

EVIDENCE

The project site is located in the South Fork Eel Planning Watershed, which under Resolution 18-43 is limited to 730 permits and 251 acres of cultivation. With the approval of this project, the total approved permits in this Planning Watershed would be 302 permits, and the total approved acres would be 92.5 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 Mayers Flat Farm, LLC Special Permit based upon the Findings and Evidence and subject to the conditions of approval attached hereto as Attachment 1 and incorporated herein by reference; and

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