

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

Resolution Number: 23-

Record Number: PLN-12179-CUP

Assessor's Parcel Number: 221-121-001

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

WHEREAS, David Thomas, submitted an application and evidence in support of approving a Conditional Use Permit for the continued operation of an existing 12,440 square feet (SF) of outdoor cannabis cultivation, including 11,000 SF that is cultivated using light deprivation techniques within seven (7) hoop houses and 1,440 SF of full-sun outdoor cultivation, in addition to 1,231 SF of ancillary propagation. Irrigation water is sourced from a 280,000-gallon rainwater catchment pond. Annual water use is 102,650 gallons and there will be a total of 520,000 gallons of water storage onsite in the pond and a series of hard-sided tanks. The water supply is shared with PLN-11751-SP (previously approved) on a contiguous parcel, Assessor's Parcel Number (APN): 221-121-013, located immediately south of the subject site. Drying and curing occurs onsite and on the adjacent property (APN: 221-121-013) within two (2) structures totaling 1,380 SF, with all other processing occurring offsite at a licensed processing or manufacturing facility or at one of the applicant's other properties (APN: 221-201-021), located southwest of the site. A maximum of three (3) people will be onsite during peak operations. Power is provided by a generator; however, the applicant has long-term plans for installation of a solar system. The proposed project also includes Special Permits for reduction of the required 600-foot buffer from public lands and for relocation of existing infrastructure outside of the required Streamside Management Area (SMA) buffer and associated restoration; 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 January 5, 2023, and reviewed, considered, and discussed the application for a Conditional Use Permit and 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 Conditional Use Permit for the continued operation of an existing 12,440 square feet (SF) of outdoor cannabis cultivation, including 11,000 SF that is cultivated using light deprivation techniques within seven (7) hoop houses and 1,440 SF of full-sun outdoor cultivation, in addition to 1,231 SF of ancillary propagation. Irrigation water is sourced from a 280,000-gallon rainwater catchment pond. Annual water use

is 102,650 gallons and there will be a total of 520,000 gallons of water storage onsite in the pond and a series of hard-sided tanks. The water supply is shared with PLN-11751-SP (previously approved) on a contiguous parcel, APN: 221-121-013, located immediately south of the subject site. Drying and curing occurs onsite and on the adjacent property (APN: 221-121-013) within two (2) structures totaling 1,380 SF, with all other processing occurring offsite at a licensed processing or manufacturing facility or at one of the applicant's other properties (APN: 221-201-021), located southwest of the site. A maximum of three (3) people will be onsite during peak operations. Power is provided by a generator; however, the applicant has long-term plans for installation of a solar system. The proposed project also includes Special Permits for reduction of the required 600-foot buffer from public lands and for relocation of existing infrastructure outside of the required Streamside Management Area (SMA) buffer and associated restoration.

EVIDENCE a) Project File: PLN-12179-CUP

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 and 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 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 1B171605CHUM) was prepared for the site and adjacent property (APN 221-121-013), located immediately south of the subject property, by Timberland Resource Consultants in May 2018 in compliance with North Coast Regional Water Quality Control Board Order No. R1-2015-0023, and a Notice of Application has been provided by the applicant to show compliance with the State Water Board Cannabis General Order for Waste Discharge. Conditions of approval require the applicant to submit copies of all documents filed with the State Water Resources Control Board, including, but not limited to, a Site Management Plan (SMP), adhere to and implement the recommendations in the WRPP and SMP, and maintain enrollment in the State Cannabis Cultivation Policy for the life of the project.
- d) California Department of Fish and Wildlife Resource Maps indicate no Special Status species are known to occur within the project area. A review of the California Natural Diversity Database (CNDDDB) Spotted Owl Observation Database in April 2022 showed that Northern Spotted Owl habitat exists in the vicinity and the nearest positive sighting is approximately 1.51 miles from the nearest cultivation area, with the nearest NSO activity center located approximately 1.97 miles away. Additionally, the onsite

cultivation is located near Final Critical Habitat for NSO (approximately 0.3 miles away), which appears to be located on the adjacent BLM lands (APN: 221-111-012) and not on the subject site. Power is provided by a generator; however, the applicant has long-term plans for installation of a solar system. While the outdoor cultivation areas utilize full-sun and light deprivation techniques, artificial lighting is utilized to support the onsite propagation areas. Conditions of approval will require noise and light attenuation measures to be implemented, including requiring noise to be at below 50 decibels at 100 feet which is below the guidance established by the California Department of Fish and Wildlife for protection of the species. Furthermore, the project is conditioned to adhere to International Dark Sky Standards for any supplemental lighting used for security or within the proposed nursery area, refrain from using synthetic netting, ensure refuse is contained in wildlife-proof storage, and refrain from using anticoagulant rodenticides to further protect wildlife. As proposed and conditioned, the project is consistent with CMMLUO performance 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 central and western portion of the site; however, it appears that timber conversion has occurred onsite in order to accommodate the existing outdoor cultivation areas and hoop houses, and appears to have occurred between 2005 and 2009, 2010 and 2012, 2012 and 2014, 2014 and 2016, and 2016 and 2018. Based on preliminary review, it appears that approximately 10 trees may have been removed post-2016.

The project is conditioned to require the property be evaluated by a Registered Professional Forester (RPF) to determine the amount of timber conversion that occurred prior to and after the CMMLUO baseline date of January 1, 2016, and submit a Timber Conversion Report prepared by a RPF, to address previously unpermitted timber conversion. The applicant/owner will be responsible for mitigating the environmental impacts not analyzed in the environmental document prepared for the CMMLUO. The applicant/owner shall be required to re-stock an area onsite equivalent to the amount of area converted after the CMMLUO baseline date at a rate of 3:1. Additionally, the project is conditioned to require preparation of a Restocking Plan within 90 days of project approval and implement the Restocking Plan within a period of two (2) years, should any timber conversion be determined to have occurred after the CMMLUO baseline date. The Restocking Plan shall include details on the locations and total areas to be restocked, the type, number, and spacing of the plantings, and a monitoring plan for three (3) years which includes performance evaluations, performance standards, and contingency measures should performance standards not be met. The Report shall include monitoring and reporting requiring a minimum of 3 years of monitoring at an 85% success rate and submission of annual monitoring reports at the time of the annual inspection. No additional tree removal is proposed or authorized by this permit.

- f) A Cultural Resources Investigation was conducted by Arsenault and Associates in March 2020 (on file and confidential), in which no historical or archaeological resources were encountered. The Report concludes the project has not and will not result in any adverse changes to any cultural resources and recommended Inadvertent Discoveries Protocol, also recommended by the Bear River Band of the Rohnerville Rancheria in April 2022, which has been included as an ongoing condition of approval.
- g) A Road Evaluation Report for an approximately 9.1-mile segment of Dutyville Road, from Ettersburg Road to the termination of Dutyville Road, was prepared by the applicant's agent in June 2022. Additionally, Road Evaluation Reports for an approximately 7.9-mile segment of Doody Ridge Road, from Wilder Ridge Road to Upper Mattole Canyon Creek Road, and an approximately 0.7-mile segment of Upper Mattole Canyon Creek Road, from Doody Ridge Road, which identified the roads to be suitable for safe access to and from the project site. Conditions of approval require the applicant to obtain an encroachment permit from the Department of Public Works and improve the intersection of Dutyville Road and Ettersburg-Honeydew Road to commercial driveway standards, as well as maintain all driveways and private road intersections onto the County road in accordance with County Code Section 341-1 (Sight Visibility Ordinance). Further, the applicant is required to maintain continued enrollment in the "Dutyville Friends of the Road" Road Maintenance Association (RMA) and shall pay fair-share cost for maintenance of the road.

FINDINGS FOR CONDITIONAL USE PERMIT AND SPECIAL PERMITS

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

EVIDENCE a) General agriculture is a use type permitted in the Residential Agriculture (RA) land use designation. The proposed cannabis cultivation, an agricultural product, is within land planned and zoned for agricultural purposes, 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 To provide minimum standards pertaining to the use and development of land located within Streamside Management Areas (SMAs) and other wet areas (OWA) to implement the County's Open Space Element of the General Plan.

EVIDENCE a) Conditions of approval require the applicant to adhere to and implement the projects and recommendations contained in the Final SAA and provide evidence to the Planning Department that the projects included in the Final SAA are completed to the satisfaction of CDFW. By implementing permit conditions from CDFW, impacts to the SMA are minimized.

b) Based on the Site Plan, all cultivation activities and most respective infrastructure are located outside of the respective SMA buffers; however, six

(6) existing water storage tanks (two 550-gallon, two 2,500-gallon, and two 5,000-gallon tanks) are shown within the required SMA buffers, which will be required to be relocated outside of all required SMA buffers to a previously disturbed area without the use of heavy machinery. Additionally, the applicant is required to submit a restoration plan or similar communication describing how the area will be restored and submit evidence demonstrating the area has been restored.

5. FINDING

The proposed development is consistent with the purposes of the existing FR zone in which the site is located

EVIDENCE

- a) The Forestry Recreation or FR Zone is intended to be applied to forested areas of the County in which timber production and recreation are the desirable predominant uses and agriculture is the secondary use, and in which protection of the timber and recreational lands is essential to the general welfare.
- b) All general agricultural uses are principally permitted in the FR zone.
- c) Humboldt County Code section 314-55.4.8.2.2 allows cultivation of up to 43,560 square feet of existing 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 12,440 square feet of outdoor cultivation on a 40-acre parcel is consistent with this and with the cultivation area verification prepared by the County.

6. FINDING

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

EVIDENCE

- a) The CMMLUO allows existing cannabis cultivation to be permitted in areas zoned FR (HCC 314-55.4.8.2.2).
- b) The parcel was created in compliance with all applicable state and local subdivision regulations, created under Creation Deed No. 1910-99112, recorded August 12, 1971.
- c) Water for irrigation is provided by an existing 280,000-gallon rainwater catchment pond located within the southern portion of the subject property. Existing available onsite water storage is 520,000 gallons in the pond and a series of hard-sided tanks. The water supply is shared with PLN-11751-SP (previously approved by the Zoning Administrator on May 6, 2021) on contiguous parcel APN: 221-121-013, located immediately south of the subject site. The estimated annual water required for the project (102,650 gallons), in addition to the water required for APPS #11751 (66,500 gallons), equates to approximately 169,150 gallons. Based on the pond's surface area of 4,212 SF, and an average rainfall amount of 56.97 inches, the pond's potential capture amount totals approximately 148,774 gallons per year, on average, which equates to approximately 88% of the annual water amount utilized by the project and the operation on the adjacent property (169,150 gallons). As such, additional water supply (a minimum of 20,376 gallons) is needed to serve the projects. Planning staff recommends that rainwater catchment infrastructure be added to existing structure(s) located on the subject site in

order to capture the additional rainwater needed to meet the needs of the project. Planning staff calculated that, at a minimum, rainwater catchment infrastructure would need to be added to structure(s) totaling a minimum of 577 SF in order to capture the additional water needed for the project, which has been included as a condition of approval. With the addition of the additional rainwater catchment infrastructure to the subject site, Planning staff believes there will be sufficient water from rainwater and in storage to meet the needs of the project. Conditions of approval require the applicant to monitor water use from the rainwater catchment pond, additional rainwater catchment infrastructure (to be added under the project), and water tanks annually to demonstrate there is sufficient water available to meet operational needs. In addition, the applicant shall record a contingent easement between APNs: 221-121-001 (subject site) and 221-121-013 (adjacent parcel) to allow for continued use of water from the rainwater catchment pond and rainwater catchment infrastructure (to be added under Condition of Approval A.8) by the adjacent property (APN: 221-121-013) for the life of the project.

- d) A Road Evaluation Report for an approximately 9.1-mile segment of Dutyville Road, from Ettersburg Road to the termination of Dutyville Road, was prepared by the applicant's agent in June 2022. Additionally, Road Evaluation Reports for an approximately 7.9-mile segment of Doody Ridge Road, from Wilder Ridge Road to Upper Mattole Canyon Creek Road, and an approximately 0.7-mile segment of Upper Mattole Canyon Creek Road, from Doody Ridge Road, which identified the roads to be functionally appropriate for the expected traffic. Conditions of approval require the applicant to obtain an encroachment permit from the Department of Public Works and improve the intersection of Dutyville Road and Ettersburg-Honeydew Road to commercial driveway standards, as well as maintain all driveways and private road intersections onto the County road in accordance with County Code Section 341-1 (Sight Visibility Ordinance). Further, the applicant is required to maintain continued enrollment in the "Dutyville Friends of the Road" Road Maintenance Association (RMA) and shall pay fair-share cost for maintenance of the road.
- e) The slope of the land where cannabis will be cultivated is 5%, as per the Water Resource Protection Plan (WRPP; WDID 1B171605CHUM) prepared by Timberland Resource Consultants in May 2018.
- 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 central and western portion of the site; however, it appears that timber conversion has occurred onsite in order to accommodate the existing outdoor cultivation areas and hoop houses, and appears to have occurred between 2005 and 2009, 2010 and 2012, 2012 and 2014, 2014 and 2016, and 2016 and 2018. Based on preliminary review, it appears that approximately 10 trees may have been removed post-2016.

The project is conditioned to require the property be evaluated by a Registered Professional Forester (RPF) to determine the amount of timber conversion that occurred prior to and after the CMMLUO baseline date of January 1, 2016,

and submit a Timber Conversion Report prepared by a RPF, to address previously unpermitted timber conversion. The applicant/owner will be responsible for mitigating the environmental impacts not analyzed in the environmental document prepared for the CMMLUO. The applicant/owner shall be required to re-stock an area onsite equivalent to the amount of area converted after the CMMLUO baseline date at a rate of 3:1. Additionally, the project is conditioned to require preparation of a Restocking Plan within 90 days of project approval and implement the Restocking Plan within a period of two (2) years, should any timber conversion be determined to have occurred after the CMMLUO baseline date. The Restocking Plan shall include details on the locations and total areas to be restocked, the type, number, and spacing of the plantings, and a monitoring plan for three (3) years which includes performance evaluations, performance standards, and contingency measures should performance standards not be met. The Report shall include monitoring and reporting requiring a minimum of 3 years of monitoring at an 85% success rate and submission of annual monitoring reports at the time of the annual inspection. No additional tree removal is proposed or authorized by this permit.

- g) The location of the cultivation complies with most setbacks required in Section 314-55.4.11.d. It is more than 30 from any property line and more than 600 feet from any school, church, or Tribal Cultural Resource.

However, existing cultivation is not located more than 600 feet from public lands. A parcel directly to the southwest of the site (APN 221-111-012) is owned by the Bureau of Land Management (BLM). The cultivation area located within the southwestern corner of the subject site is located approximately 198 feet northeast from the public land at the nearest point, as measured on Humboldt County WebGIS; however, no developed or designated recreational facilities are within 600 feet of the cultivation and propagation areas.

In referral comments received from BLM in October 2022 (Attachment 4), BLM noted the contiguous BLM land is designated as Critical Habitat for NSO and “contains one of the last remaining old growth Douglas fir stands in the area”. BLM expressed concerns for the project to impact BLM land and sensitive wildlife species and for the “close proximity of this proposed cannabis operation to NSO critical habitat and a historic NSO activity center.” However, the project is not anticipated to impact the adjacent lands or their use because the cultivation activities will minimize impacts to biological resources and wildlife through measures to reduce potential light and noise impacts. The project will not require substantial road improvements or the removal of trees. The project will minimize impacts on nearby watercourses by maintaining buffers from streams and by placing controls on the storage and use of pesticides and fertilizers, and will minimize risk from wildfire by adhering to the County’s Fire Safe Regulations and requiring adequate road access. Additionally, both a Water Resources Protection Plan and Site Management Plan, prepared by Timberland Resource Consultants in May 2018 and June 2020, respectively, were developed for the project to prevent and/or address poor water quality conditions and adverse impacts to water

resources associated with cannabis cultivation on private land. Finally, the project is consistent with recreational use on public lands by maintaining a minimum 600 buffer separation from developed campgrounds and/or trails. As a result, there will not be any new erosion, wind damage, elimination of wildlife corridors, loss of scenic beauty or reduction of quality habitat for plants and animals.

7. FINDING

The cultivation of 12,440 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 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) Irrigation water is sourced from a 280,000-gallon rainwater catchment pond.
- d) Provisions have been made in the applicant's proposal to protect water quality and thus runoff to adjacent property and infiltration of water to groundwater resources will not be affected.
- e) The Planning Commission finds that the generator use associated with the project may increase potential impacts of the project associated with greenhouse gases and wildfire. To ensure impacts associated with greenhouse gases and wildfire, the Planning Commission added two conditions of approval, including preparation and approval of an energy plan that requires the applicant to use 80% renewable energy by the end of 2026 and required use of fire-resistant materials when construction the generator containment structures. With the addition of the two conditions, 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.

8. 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 but 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.

9. 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 Cape Mendocino Planning Watershed, which under Resolution 18-43 is limited to 650 permits and 223 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 227 permits and the total approved acres would be 79.36 acres of cultivation.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Humboldt County Planning Commission does hereby:

- Adopt the findings set forth in this resolution; and
- Conditionally approves the Conditional Use Permit and Special Permits for Dave Thomas, 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 January 5, 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