

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

Resolution Number 23-

Record Number PLN-13107-CUP

Assessor's Parcel Numbers: 524-114-011

Resolution by the Planning Commission of the County of Humboldt certifying compliance with the California Environmental Quality Act and conditionally approving the Enchanted Forest, LLC, Conditional Use Permit.

WHEREAS, Enchanted Forest, LLC, submitted an application and evidence in support of approving a Conditional Use Permit for the 28,348 square feet (sq. ft.) of pre-existing outdoor cultivation, and appurtenant nursery & drying activities; and

WHEREAS, the County Planning Division, the lead agency, prepared an Addendum to the Final Mitigated Negative Declaration (MND) 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. 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 June 1, 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:

FINDING: **Project Description:** A Conditional Use Permit for 28,348 sq. ft. of pre-existing outdoor cannabis cultivation. The applicant is requesting 4,040 sq. ft. of ancillary nursery space, and the County is only recommending approval of up to 2,834 sq. ft. of ancillary nursery space. Irrigation water will be provided from a permitted well (Permit #WP2005-007) on an adjacent parcel, which is under deeded rights. Estimated annual water usage is approximately 399,369 gallons (13 gal/sq. ft./year). The site operation will utilize up to three (3) employees for operations. Trimming will occur off-site at a licensed processing facility. A 2000 watt Honda EU low decibel gasoline generator is operated intermittently and minimally, and the site is powered by PG&E. The project will be conditioned to obtain 100% of power from PG&E or other renewable source by 2026, and shall be allowed one generator for emergency backup purposes only.

EVIDENCE: Project File: PLN-13107-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 prepared for the Enchanted Forest 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) The project will source water from a permitted well (Permit #WP2005-007) that is located on the adjacent parcel north in Trinity County (APN 008-080-033-000). There is an existing Water & River Access Agreement between the applicant and three neighbors.

The applicant has obtained a Well Assessment Report (WAR) for the shared well TW-#3 (Permit #WP2005-007), prepared by licensed hydrogeologist Bonnie Lampley with Lawrence & Associates Engineers & Geologists, dated April 27, 2023. The WAR states that the assessment was prepared utilizing previous site-specific studies that were conducted by Lawrence & Associates. Several wells and test borings were installed at the Site as part of the studies, and all wells were completed with a 20-foot surface seal. The hydrologic setting for the Site is based on the results from six wells that were installed in 2005 to investigate groundwater occurrence and evaluate well yields. The WAR states that the subject well is not hydraulically connected to the river, and estimates an annual recharge rate of 352 acre-feet (114.7 million gallons).

- d) The site is currently enrolled in the State Water Resources Control Board's (SWRCB) General Order (No. WQ 2019-0001-DWQ) for Waste Discharge Requirements and Water Quality. The applicant has submitted a Notice of Applicability letter dated July 28, 2020, showing enrollment in the General Order under WDID 1_12CC422700 as a Tier 1 Low Risk site. The applicant has a Site Management Plan (SMP) prepared for the project site, which states that there is one culvert maintained by the applicant and one culvert that is maintained by Trinity County on the Trinity County maintained road. The applicant shall adhere to the ongoing maintenance activities listed in the SMP.
- e) The applicant has obtained a drafted Streambed Alteration Agreement with the California Department of Fish & Wildlife (CDFW) for the in-

stream work needed to upgrade one (1) culvert on-site, and one point of diversion for domestic uses (SAA No. EPIMS-TRI-03632-R1). Through communications with CDFW, the SAA has not been signed by CDFW and is awaiting this permit approval. The applicant shall submit the final signed SAA to the Planning Division when available, and shall adhere to the project description and work outlined within the final signed agreement.

- f) The project is located approximately 0.9 miles to the nearest known Northern Spotted Owl (NSO) activity center. According to the California Natural Diversity Database (CNDDDB) for rare and endangered species, the project site contains potential habitat areas near the Trinity River for any rare or endangered species, the western pond turtle and the foothill yellow-legged frog. As the potential habitat is located away from any proposed project activities, the project is for pre-existing activities, and no new ground disturbance is proposed, no Biological Assessment was required. The project was referred to CDFW on August 25, 2017, and no comments were received. The County reached out to CDFW again on May 10, 2023, to request any comments, and no final comments on the project have been received. The applicant is required to comply with International Dark Sky Standards for lighting within the propagation greenhouse, and shall ensure that all noise levels do not go above 50 decibels at 100-feet or any tree line when noise generating equipment are in use.
- g) A 2000 watt Honda EU low decibel gasoline generator will be operated intermittently to power lights within the ancillary nursery greenhouses, and fans for drying. The applicant is proposing an Ag drop with PG&E through the existing power poles on the property. The project is conditioned to obtain 100% of power from PG&E or other renewable source by 2026, and shall be allowed one generator for emergency backup purposes only. In the event that the applicant cannot receive an Ag power drop from PG&E by 2026, the applicant shall submit an Energy Plan to the Planning Division to describe how they will achieve 100% renewable energy on-site, and will be required to obtain any necessary permits.
- h) There was vegetation removal of brush and trees after 2016, and it appears that approximately 1.09 acres of unauthorized timber conversion took place for cannabis cultivation post-2016. A Restocking Plan was prepared by RPF Thomas Blair with Blair Forestry Consulting, dated December 13, 2021, which recommends the replanting of 2.4 acres of area on-site, and shows one (1) site recommended for restocking. A timber conversion evaluation report was never prepared for the site, and where the 2.4 acres of restocking area came from in the Restocking Plan is unknown. From measurements utilizing aerial imagery, approximately 1.09 acres of timber conversion occurred on the site post-2016, and the applicant

shall restock 1.09 acres in total on the site. The applicant shall adhere to the restocking recommendations within the Restocking Plan for 1.09 acres.

- i) The project is located within the Hoopa Tribe and Tsnungwe Tribes ancestral aboriginal territories. The applicant has submitted a Cultural Resource Investigation Report (CRIR) prepared by James Roscoe, M.A., with Roscoe and Associates, dated July 2017. An investigation of the subject parcel was conducted during the spring and summer of 2017. Tsnungwe Council-member Bob Benson was present for the field survey on May 9, 2017. The field survey found artifacts located on the site, but outside of the project area, and a recommendation was made that no new substantial ground-disturbance or heavy equipment-use occur within the boundaries where artifacts were found. From review of aerial imagery it appeared that the area with artifacts may have been disturbed, and a site visit was conducted with Tsnungwe Council-member Bob Benson on May 15, 2023, which confirmed that the artifacts had not been disturbed. The applicant shall adhere to the recommendation in the CRIR that no new substantial ground-disturbance or heavy equipment-use occur within the boundaries where artifacts were found, and should future ground-disturbing work be proposed within the boundaries of the Site found to have artifacts, a professional archaeologist shall review the proposed actions and, in cooperation with the Tnungwe Tribe, develop mitigation measures that would avoid a substantial adverse change to the Site. The applicant shall also adhere to Inadvertent Discover Protocols.
- j) The site is accessed from Forest Route 5N03/S. Fork Road, from S. Fork Road, from Hwy 299. The project was referred to the Department of Public Works on August 25, 2017, and comments were received by the agency on February 7, 2018. Comments from Public Works stated that the access to the site is from Trinity County, and requests a road evaluation report for the access road. The applicant has submitted a Road Evaluation Report form for the access road S. Fork Road, showing that it is maintained by Trinity County, and designating the road as being developed to the equivalent of a road category 4 standard. As the site is accessed from a US Forest Service road that goes through Trinity County, the project was referred to the Trinity County Planning Department and the US Forest Service on February 13, 2019. No comments were received by either agency. The site will be operated by the applicant and up to three (3) employees, and a maximum of ten (10) vehicle trips are anticipated per day. As the site is for pre-existing operations, no increase in traffic is anticipated.

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) 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 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 The proposed development is consistent with the purposes of the existing U zone in which the site is located.

EVIDENCE a) The Unclassified or U Zone is intended to be applied to areas of the County in which general agriculture uses is a desirable use.
b) All general agricultural uses are principally permitted in the U 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 sq. ft. of existing mixed-light cannabis on a parcel zoned U over 1 acres 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 28,348 sq. ft. of outdoor cultivation on a 21-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 U (HCC 314-55.4.8.2.2).
b) The subject parcel has been determined to be a legal parcel per Parcel Map#3573 BK35 PG95, Parcel 3.
c) The project will source water from a permitted well (Permit #WP2005-007) that is located on the adjacent parcel north in Trinity County (APN 008-080-033-000). There is an existing Water & River Access Agreement between the applicant and three neighbors.

The applicant has obtained a Well Assessment Report (WAR) for the shared well TW-#3 (Permit #WP2005-007), prepared by licensed hydrogeologist Bonnie Lampley with Lawrence & Associates Engineers & Geologists, dated April 27, 2023. The WAR states that the assessment was prepared utilizing previous site-specific studies that

were conducted by Lawrence & Associates. Several wells and test borings were installed at the Site as part of the studies, and all wells were completed with a 20-foot surface seal. The hydrologic setting for the Site is based on the results from six wells that were installed in 2005 to investigate groundwater occurrence and evaluate well yields. The WAR states that the subject well is not hydraulically connected to the river, and estimates an annual recharge rate of 352 acre-feet (114.7 million gallons).

- d) The site is accessed from Forest Route 5N03/S. Fork Road, from S. Fork Road, from Hwy 299. The project was referred to the Department of Public Works on August 25, 2017, and comments were received by the agency on February 7, 2018. Comments from Public Works stated that the access to the site is from Trinity County, and requests a road evaluation report for the access road. The applicant has submitted a Road Evaluation Report form for the access road S. Fork Road, showing that it is maintained by Trinity County, and designating the road as being developed to the equivalent of a road category 4 standard. As the site is accessed from a US Forest Service road that goes through Trinity County, the project was referred to the Trinity County Planning Department and the US Forest Service on February 13, 2019. No comments were received by either agency. The site will be operated by the applicant and up to three (3) employees, and a maximum of ten (10) vehicle trips are anticipated per day. As the site is for pre-existing operations, no increase in traffic is anticipated.
- e) There was vegetation removal of brush and trees after 2016, and it appears that approximately 1.09 acres of unauthorized timber conversion took place for cannabis cultivation post-2016. A Restocking Plan was prepared by RPF Thomas Blair with Blair Forestry Consulting, dated December 13, 2021, which recommends the replanting of 2.4 acres of area on-site, and shows one (1) site recommended for restocking. A timber conversion evaluation report was never prepared for the site, and where the 2.4 acres of restocking area came from in the Restocking Plan is unknown. From measurements utilizing aerial imagery, approximately 1.09 acres of timber conversion occurred on the site post-2016, and the applicant shall restock 1.09 acres in total on the site. The applicant shall adhere to the restocking recommendations within the Restocking Plan for 1.09 acres.
- f) The location of the cultivation complies with all setbacks required in Section 314-55.4.11.d. It is more than 30 feet from any property line, and more than 600 feet from any school, school bus stop, church or other place of religious worship, Public Park or Tribal Cultural Resource.

6. FINDING

The cultivation of 28,348 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 in a rural part of the County where the typical parcel size is over 20 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.

b) The project will source water from a permitted well (Permit #WP2005-007) that is located on the adjacent parcel north in Trinity County (APN 008-080-033-000). There is an existing Water & River Access Agreement between the applicant and three neighbors.

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c) A 2000 watt Honda EU low decibel gasoline generator will be operated intermittently to power lights within the ancillary nursery greenhouses, and fans for drying. The applicant is proposing an Ag drop with PG&E through the existing power poles on the property. The project is conditioned to obtain 100% of power from PG&E or other renewable source by 2026, and shall be allowed one generator for emergency backup purposes only. In the event that the applicant cannot receive an Ag power drop from PG&E by 2026, the applicant shall submit an Energy Plan to the Planning Division to describe how they will achieve 100% renewable energy on-site, and will be required to obtain any necessary permits

d) The parcel is located in an area designated to have a Very High Fire Hazard Severity, and is outside of any local fire response area. 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. The project is located within the State Responsibility Area (SRA) for CalFire. The Site Plan shows a firetruck turnaround, and one (1) 2,500 gallon water storage tank designated for fire suppression needs only. The designated fire suppression tank shall also have the appropriate fire hose that meets CalFire SRA requirements.

- e) The site is accessed from Forest Route 5N03/S. Fork Road, from S. Fork Road, from Hwy 299. The project was referred to the Department of Public Works on August 25, 2017, and comments were received by the agency on February 7, 2018. Comments from Public Works stated that the access to the site is from Trinity County, and requests a road evaluation report for the access road. The applicant has submitted a Road Evaluation Report form for the access road S. Fork Road, showing that it is maintained by Trinity County, and designating the road as being developed to the equivalent of a road category 4 standard. As the site is accessed from a US Forest Service road that goes through Trinity County, the project was referred to the Trinity County Planning Department and the US Forest Service on February 13, 2019. No comments were received by either agency. The site will be operated by the applicant and up to three (3) employees, and a maximum of ten (10) vehicle trips are anticipated per day. As the site is for pre-existing operations, no increase in traffic is anticipated.

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

EVIDENCE

- a) The project site is located in the South Fork Trinity Planning Watershed, which under Resolution 18-43 is limited to 86 permits and 29 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 26 cultivation permits and the total approved acres would be 12 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 Enchanted Forest, LLC, 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 **June 1, 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