

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

Resolution Number: 23-

Records Number: PLN-11949-CUP

Assessor's Parcel Number: 222-083-007

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

WHEREAS, Burr Road, LLC submitted an application and evidence in support of approving a Conditional Use Permit for an existing 12,100 square foot (SF) mixed light cannabis cultivation including 1,210 SF of ancillary propagation. Irrigation water is currently sourced from an existing groundwater well; however, the applicant proposes to switch to use of an already permitted spring diversion. Estimated annual water usage is 171,468 gallons, and there will be a total of 120,100 gallons of onsite water storage, including 1,100 gallons and 2,500 gallons dedicated to domestic and fire suppression use, respectively. Processing occurs onsite. A maximum of four (4) persons will be onsite during peak operations. Power for cultivation is provided by two (2) generators, with a third generator utilized for back-up power. A Special Permit is also requested for development within the Streamside Management Area (SMA) for continued use and maintenance of the point of diversion infrastructure; 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 March 2, 2023, and reviewed, considered, and discussed the application for a Conditional Use Permit and Special 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 12,100 square foot (SF) mixed light cannabis cultivation including 1,210 SF of ancillary propagation. Irrigation water is currently sourced from an existing groundwater well; however, the applicant proposes to switch to use of an already permitted spring diversion. Estimated annual water usage is 171,468 gallons, and there will be a total of 120,100 gallons of onsite water storage, including 1,100 gallons and 2,500 gallons dedicated to domestic and fire suppression use, respectively. Processing occurs onsite. A maximum of four (4) persons will be onsite during peak operations. Power for cultivation is provided by two (2) generators, with a third generator utilized for back-up power. A Special Permit is also requested for development within the Streamside Management Area (SMA) for continued use and maintenance of the point of diversion infrastructure.

EVIDENCE: a) Project File: PLN-11949-CUP

- 2. FINDING:** **CEQA.** The requirements of the California Environmental Quality Act have been complied with. The Planning Commission has considered the Mitigated Negative Declaration previously adopted for the Commercial Medical Marijuana Land Use Ordinance as well as the Addendum to the Mitigated Negative Declaration that was 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 Site Management Plan (SMP) was prepared by ETA Humboldt in October 2021 and a Notice of Applicability (WDID: 1_12CC417915) was submitted by the applicant to show compliance with the State Water Board Cannabis General Order for Waste Discharge. Conditions of approval require the applicant to adhere to and implement the recommendations of the SMP and maintain enrollment in the State Cannabis Cultivation Policy for the life of the project.
- d) Review of the California Natural Diversity Database (CNDDDB) indicates no mapped sensitive species onsite. However, Northern Spotted Owl (NSO) habitat exists in the vicinity and the nearest positive observation is located approximately 0.92 miles from the project area, with the nearest NSO activity center located approximately 1.14 miles away. Power for the project is currently provided by two (2) generators, with a third generator utilized for back-up power. Artificial lighting is also utilized for the mixed light cultivation and ancillary propagation areas. The project is conditioned such that combined noise generated from generators shall not exceed 50 decibels (dB) at 100 feet from the generator or at the edge of the nearest forest habitat, whichever is closer, as required by Section 314-55.4.11(o) Humboldt County Code. Additionally, conditions of approval require the applicant to submit a revised 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), how the size of the generator is reasonable based on the power demand, and how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026. Furthermore, the project is conditioned to adhere to International Dark Sky Standards for any supplemental lighting used for cultivation, propagation, and security, 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) The cultivation of cannabis will not result in the net conversion of

timberland. A review of available satellite imagery dating back to 2004 indicates that between 2005 and 2009 approximately 0.98 acres of timber was converted on the subject site, before the CMMLUO environmental baseline date of January 1, 2016. A Less Than Three Acre Conversion Exemption was issued by the California Department of Forestry and Fire Prevention (CAL FIRE) in April 2015, which authorized a total of 2.5 acres of timberland to be converted on the subject property. The converted areas appear to generally correspond with the timber conversion map included in the Less Than Three Acre Conversion Exemption; however, it appears a larger conversion area proposed within the southwestern portion of the subject property was not converted. Conditions of approval require the project to adhere to the terms of the Less Than Three Acre Conversion, including treatment of logging slash and woody debris and the winter operating plan. No timber removal is proposed or authorized under this permit.

- f) A Cultural Resources Investigation was prepared for the project by Arsenault & Associates in March 2018, which did not identify any resources on the subject site and recommended inclusion of the Inadvertent Discovery Protocol, also requested by the Tribal Historic Preservation Officer for the Bear River Band of the Rohnerville Rancheria in October 2021, which has been included as an ongoing condition of approval.
- g) Access to the site is via a private drive on Old Somerville Creek Road (which traverses the site), a non-County-maintained road via Old Briceland Road (a County-maintained road) to Briceland Thorne Road (a County-maintained Category 4 road). A Road Evaluation Report was prepared by a representative of the applicant in July 2018 for a 1.9-mile segment of Old Somerville Creek Road, which indicates that the roadway is not developed to the equivalent of road category 4 or better, but can accommodate the increased traffic from the proposed use and is suitable for safe access to and from the project site. In response to comments received from the Department of Public Works, Land Use Division in January 2023, conditions of approval require the applicant improve the access road (Old Somerville Creek Road) where it intersects the County road (Old Briceland Road) to commercial driveway standards and maintain all driveways and public road intersections onto the County Road in accordance with County Code Section 341-1 (Sight Visibility Ordinance).

FINDINGS FOR CONDITIONAL USE PERMIT AND 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 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 Timberland Production Zone (TPZ) zone in which the site is located.

EVIDENCE

- a) The Timberland Production Zone (TPZ) zone 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 accessory agricultural uses are principally permitted in the TPZ 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 16,025 square feet of cultivation including ancillary propagation on an 80-acre parcel is consistent with this and the cultivation area verification on file.
- d) The site contains several Class II and Class III watercourses and the SMP recommends various improvements to protect water quality and maintain necessary crossings. These improvements are included in the Final SAA issued for the project (Notification No. 1600-2016-0094-R1) by CDFW in July 2016. 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. Conditions of approval also require the applicant to implement the recommendations in the SMP. By implementing permit conditions from CDFW, as well as the recommendations in the SMP, impacts to the SMA are minimized.

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 TPZ (HCC 314-55.4.8.2.2).
- b) The parcel was created in compliance with all applicable state and local subdivision regulations, as confirmed by a Certificate of Subdivision Compliance (County Case No. CC-08-05; Recorded Document No. 2009-3416-2, recorded February 18, 2009) and identified as Parcel One in Book 220 of Deeds, Page 152, Humboldt County Records.
- c) Water for irrigation is provided by an existing groundwater well; however, the applicant is proposing to switch to use of an already permitted spring diversion and add additional water storage on the subject site. The well is located in the central portion of the site, immediately south of Greenhouse #2 and approximately 125 feet away from the nearest Streamside Management Area (SMA), as per the Site Plan. As the well has not been assessed for

hydrologic connectivity to surface waters, conditions of approval require the applicant to cease use of the well prior to the 2024 cultivation season.

A Right to Divert and Use Water (Registration ID: H505220; Certificate No.: H100557) was issued by the State Water Resources Control Board (SWRCB) in December 2018 for use of the point of diversion from the unnamed spring for irrigation and fire protection. The *Right to Divert and Use Water* allows for 0.18 acre-feet per year (or 58,653 gallons) of water to be diverted from the spring annually, with forbearance required between June 1st and October 31st. The rate of diversion to storage is limited to 42,000 gallons per day. Storage capacity cannot exceed 0.22 acre-feet (or 71,687 gallons). Existing available water storage is 40,100 gallons in sixteen (16) HDPE storage tanks ranging in size from 1,100 gallons to 3,000 gallons, with 1,100- and 2,500-gallon tanks dedicated to domestic and fire suppression use, respectively. An additional 80,000 gallons in HDPE tanks are proposed, for a total of 120,100 gallons of onsite water storage. Once the additional tanks are added, there would be a total of 116,500 gallons of onsite water storage dedicated for irrigation use. The storage tanks for domestic and fire suppression use will be filled via a separate domestic spring diversion and the well. While existing water storage used in accordance with the *Right to Divert and Use Water* (36,500 gallons) is within the allowable amount, once the additional tanks are added to the site, the onsite water storage will exceed the amount of storage authorized under the appropriative right by approximately 44,813 gallons. As such, conditions of approval require the applicant to utilize a maximum of 71,687 gallons of onsite water storage for water diverted from the spring.

Planning staff finds the amount of water which can be diverted under the appropriative right (58,653 gallons) is not sufficient to meet the annual water demand of the project (171,468 gallons), resulting in a deficit of approximately 112,815 gallons annually, nor is the amount of water storage allowed under the appropriative right (71,687 gallons) sufficient to allow for forbearance requirements to be met (134,000 gallons required). As such, conditions of approval require the applicant to reduce the amount of cultivation on the subject site to the amount that can be supported by amount of water that can be diverted and stored under the appropriative right, or 5,645 SF, until rainwater catchment infrastructure is added to the subject site (with a minimum catchment area of 5,214 SF) OR the applicant obtains a revised *Right to Divert and Use Water* from the SWRCB. Additional conditions of approval require the applicant to monitor water use from the well (until use is required to cease prior to the 2024 cultivation season), spring diversion, rainwater catchment system (once operational), and water tanks annually to demonstrate there is sufficient water available to meet operational needs.

- d) Access to the site is via a private drive on Old Somerville Creek Road (which traverses the site), a non-County-maintained road via Old Briceland Road (a County-maintained road) to Briceland Thorne Road (a County-maintained Category 4 road). A Road Evaluation Report was prepared by a representative of the applicant in July 2018 for a 1.9-mile segment of Old Somerville Creek Road, which indicates that the roadway is not developed to

the equivalent of road category 4 or better, but is functionally appropriate for the expected traffic. In response to comments received from the Department of Public Works, Land Use Division in January 2023, conditions of approval require the applicant improve the access road (Old Summerville Creek Road) where it intersects the County road (Old Briceland Road) to commercial driveway standards and maintain all driveways and public road intersections onto the County Road in accordance with County Code Section 341-1 (Sight Visibility Ordinance).

- e) The natural slopes of the land where cannabis will be cultivated is between 15% and 50% as per the County GIS.
- f) The cultivation of cannabis will not result in the net conversion of timberland. A review of available satellite imagery dating back to 2004 indicates that between 2005 and 2009 approximately 0.98 acres of timber was converted on the subject site, before the CMMLUO environmental baseline date of January 1, 2016. A Less Than Three Acre Conversion Exemption was issued by the California Department of Forestry and Fire Prevention (CAL FIRE) in April 2015, which authorized a total of 2.5 acres of timberland to be converted on the subject property. The converted areas appear to generally correspond with the timber conversion map included in the Less Than Three Acre Conversion Exemption; however, it appears a larger conversion area proposed within the southwestern portion of the subject property was not converted. Conditions of approval require the project to adhere to the terms of the Less Than Three Acre Conversion, including treatment of logging slash and woody debris and the winter operating plan. No timber removal is proposed or authorized under this permit..
- g) The location of the cultivation complies with all setbacks required in Section 314-55.4.11.d. It is more than 30 feet from 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

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. Conditions of approval also require the applicant to adhere to the terms and conditions of the Right to Use and Divert Water issued by the State Water Resources Control Board (SWRCB). By implementing permit conditions from the SWRCB and CDFW, impacts to the SMA are minimized.

7. FINDING

The cultivation of 12,100 SF of cannabis cultivation including ancillary propagation 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 10 acres. 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.
 - c) Irrigation water is currently derived from a groundwater well. Based on comments received from the Department of Environmental Health (DEH) in April 2021 (on file with Planning), DEH has no record of the well and the “owner shall either provide evidence of permit, destroy the well, legalize the well through installation of a new sanitary surface seal, or provide compelling evidence that the well was installed prior to February 1973.” However, under the project, the applicant proposes to cease use of the well for irrigation and switch to use of an already permitted spring diversion and add additional water storage. Conditions of approval require that use of the well must cease prior to the 2024 cultivation season, and require additional water storage tanks and rainwater catchment infrastructure be added to ensure a sufficient water supply is available to support the project.
 - 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.

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 Eel 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 301 permits and the total approved acres would be 90.8 acres of cultivation.

9. 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 an existing residence. 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.

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 Permit for Burr Road, 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 March 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