

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

**Resolution Number 24-**

**Record Number: PLN-12705-CUP**

**Assessor's Parcel Numbers: 217-251-003, 217-244-004, 217-244-007 & 217-225-007**

**Resolution by the Planning Commission of the County of Humboldt certifying compliance with the California Environmental Quality Act and conditionally approves the Stephen Earley Conditional Use Permit request.**

**WHEREAS**, Stephen Earley submitted an application and evidence in support of approving a Conditional Use Permit for authorizing the continued operation of 47,560 square feet of pre-existing outdoor cultivation; 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 April 4, 2024, and continued consideration of the Conditional Use Permit at the request of the applicant and staff; and

**WHEREAS**, the Humboldt County Planning Commission held a duly-noticed public hearing on May 2, 2024, during which they reviewed, considered, and discussed the application for a Conditional Use Permit, and reviewed and considered all evidence and testimony presented at the hearing; and

**Now, THEREFORE BE IT RESOLVED**, that the Planning Commission makes all of the following findings:

- 1. FINDING:**                    **Project Description:** A Conditional Use Permit for authorizing the continued operation of pre-existing commercial cannabis cultivation on a parcel where approximately 68,000 square feet of area was historically used for outdoor cultivation and approximately 4,400 square feet of area was used for mixed light cultivation operated from the property since prior to 2016. Under the Use Permit, one (1) acre of the prior outdoor cultivation is proposed to be continued and the 4,400 square feet of Mixed-Light Cultivation will instead be operated in an Outdoor fashion, for a combined total of approximately 47,560 square feet of outdoor cultivation. Cultivation

activities are proposed to be removed and relocated from three existing sites and consolidated within two distinct areas on the property. The three former sites are proposed to be fully remediated following removal of all cultivation infrastructure. Cultivation will continue to occur primarily in pots, within a series of approximately 22 greenhouses, each approximately 20 feet in width and of varying lengths. Light deprivation techniques will be used to induce early flowering and allow for a total of 2 harvests per year in each of the greenhouses. Juvenile cannabis plants will be supplied to the property twice a year delivered from an off-site licensed nursery. Two (2) greenhouses (each approximately 2,000 square feet in size) are proposed to be constructed and will primarily be used as propagation areas to help mature juvenile plants used during the second cultivation cycle. No supplemental lighting or generators are used as part of the cultivation and propagation activities. Annual estimated water usage for cultivation is 687,000 gallons and all water for irrigation is provided by an existing off-stream rainwater catchment pond with approximately 2,000,000 gallons of storage. Initial processing and drying of the harvest occurs within two existing barns and further processing occurs off-site. All cultivation operations are conducted by the property owner and their family.

**EVIDENCE:** a) Project File: PLN-12705-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 project specific Addendum to the MND.

**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 - 1B170595CHUM) was prepared by Timberland Resource Consultants for the subject site on November 24, 2018 and revised on May 1, 2018 in compliance with the North Coast Regional Water Quality Control Board (NCRWQCB) Order No. R1-2015-0023, and a Notice of Applicability (WDID 1\_12CC419187; issued 7/15/20) 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 comply with the State Water Resources Control Board Cannabis Cultivation Policy, which includes development and implementation of a Site Management Plan, and maintain enrollment in the Cannabis General Order for the life of the project.

- d) Per review of CDFW's California Natural Diversity Database (CNDDDB) in March 2022, the site is mapped within potential Northern Spotted Owl (NSO) habitat. NSO surveys were conducted as part of a Timber Harvest Plan prepared for a neighboring property and no known Activity Centers have been discovered near the existing and proposed cultivation sites. The nearest Northern Spotted Owl (NSO) activity center is located approximately 0.5 miles away from the parcel. The applicant is electing to discontinue use of supplemental lighting within greenhouses which will eliminate the need for use of generators to supply power.
- e) On April 27, 2023, a Biological Reconnaissance Report (Biological Report) was prepared by Biologist Corrina Kamoroff of Hohman and Associates. The report assess the suitability of the site to support special-status plant and animal species and evaluate potential impacts on sensitive biological resources associated with commercial cannabis cultivation. As noted in the Report, portions of the current cultivation sites are located in areas impacting sensitive riparian habitat and removal and relocation to an environmentally superior location is appropriate.
- f) On August 23, 2023, a Botanical survey was conducted by Caitlyn Allchin on behalf of Hohman and Associates. The survey revealed that a small portion of the area targeted for relocation is home to Tracy's tarweed, a limited distribution plant which occurs abundantly in the adjacent grasslands. The footprint of the area targeted for relocation has been adjusted to enable avoidance of portions of this population of a limited distribution plant, including the area labeled as "Protected Area" adjacent to Cultivation Area #1 (Relocation Area) shown on the site plan package provided by Clearwater Ag Services dated 12/22/23.

The report notes that this plant occurs abundantly in the adjacent grasslands, and that the population will likely not be negatively impacted by cultivation activities. The location of populations of this plant are shown in Figure 4 on page 32 of the report by Hohman and Associates. A Condition of Approval has been included requiring that development of Cultivation Area #1 be excluded from the "Protected Area" shown on the site plan, unless explicitly

authorized by representatives of the California Department of Fish & Wildlife, following consultation.

- g) Additionally, significant impacts on special-status wildlife species are not anticipated, since the project is outside of their known ranges, suitable habitat is lacking, and the project does not involve habitat modification, significant noise disturbance, or unnatural lighting.
- h) If the project is modified or expanded in the future, it is recommended that seasonally appropriate surveys be conducted prior to any new construction, ground-disturbance, or vegetation removal, which has been included as an ongoing condition of approval.

Conditions of approval will require 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.

Additional conditions of approval require the applicant to 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 standards and CDFW guidance and will not negatively impact NSO or other sensitive species.

- i) The cultivation of cannabis will not result in the net conversion of timberland. Review of historical satellite imagery shows that the all areas of prior and proposed cultivation have been unforested grassland since at least 2004.

No tree removal is proposed or authorized by this permit.

- j) A Cultural Resources Investigation was prepared by Archaeological Research and Supply Company in May 2023 (on file and confidential), which concluded that the proposed project will not result in any adverse changes to historical or archaeological resources. Two archaeological sites were discovered on the property and documented in the report, which recommends establishing a 25-foot buffer around the site boundaries and that a tribal and/or archaeological monitor be present during future ground disturbing activities. These recommendations have been incorporated within the Conditions of Approval.

On April 16, 2024 planning staff visited the project site along with the property owner/applicant, their consultant, and Edwin Smith of the Bear River Band of the Rohnerville Rancheria. During the site visit the westernmost of the two recorded sites was visited and

inspected and it was agreed that monitoring of future ground disturbance and application of a 100-foot setback from the site boundary were sufficient to ensure impacts to Tribal Cultural Resources would be prevented.

Additionally, the project also includes the requirement that all future ground disturbance be subject to the Inadvertent Discoveries Protocol, which will ensure that all work is stopped and appropriate county and tribal representatives are contacted in the event that tribal cultural resources are inadvertently encountered.

- k) A Road Evaluation Report for the privately maintained road, from Church Road to the subject property, was prepared in September 2023. The report indicates that the roadway is developed to the functional equivalent of the Category 4 road standard and is appropriate for the volume of expected traffic. The project is conditioned to require the applicant improve the first 50 feet of the private portion of Church Street, approximately 0.17 miles from its intersection with Alderpoint Road. An encroachment through the Land Use Division of Public Works will be required to complete this work.

### **312-1.1.2 Legal Lot Requirement**

**3. FINDING:** The parcels were created in compliance with all applicable state and local subdivision regulations.

**EVIDENCE:** a) A review of historic land records reveals that APN 217-251-003 and 217-244-004 constitute one legal parcel. The parcel represents an intact patent and was first described in Patent Certificate No. 2370 for 160-acres to Frederick Slatterie, dated June 30, 1875. Additionally, review of historic land records reveals that APN 217-225-006 and 217-244-006 constitute one legal parcel. The parcel represents an intact patent and was first described in Patent Certificate No. 5539 for 160-acres to Benjamin Plummer, dated February 5, 1884. Review of the legal descriptions and vesting in current deeds confirms that these patents remain intact. This serves to confirm that the parcels can be recognized as lawfully predating the advent of state and local subdivision regulations.

### **FINDINGS FOR CONDITIONAL USE PERMIT**

**4. 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 Agriculture Grazing (AG) 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 the 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.

**5. FINDING:** The proposed development is consistent with the purposes of the existing Agriculture Exclusive (AE) zone in which the site is located.

**EVIDENCE:** a) The Agriculture Exclusive or AE Zone is intended to be applied in fertile areas in which agriculture is and should be the desirable predominant use and in which the protection of this use from encroachment from incompatible uses is essential to the general welfare.

b) All general agricultural uses are principally permitted in the AE 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 parcels zoned Agriculture Exclusive (AE) and a determination that the cultivation was in existence prior to January 1, 2016. The application for 43,560 square feet of Outdoor cultivation and 4,400 square feet of Mixed-Light Cultivation to be operated in an Outdoor fashion on 160 acres of AE zoned lands is consistent with this and with the cultivation area verification prepared by the County. Approximately 68,000 square feet of pre-existing cultivation has been independently verified by County staff using historic satellite imagery and information supplied by the applicant.

**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 AE (HCC 314-55.4.8.2.2).

b) The parcels were created through patents in 1875 and 1884, prior to the advent of ordinarily applicable state and local subdivision regulations. Review of the legal descriptions and vesting in current deeds confirms that these patents remain intact.

c) Water for irrigation is provided by an existing off-stream rainwater catchment pond with approximately 2,000,000 gallons of storage capacity. Estimated annual water usage is 687,000 gallons.

Conditions of approval require that the applicant secure building permits for all structures related to cannabis cultivation, including ponds. Conditions of the permit and water board enrollment require metering of all irrigation-related water use and furnishing those records upon request.

- d) A Road Evaluation Report for the privately maintained road, from Church Road to the subject property, was prepared in September 2023, which indicates that the roadway is developed to the functional equivalent of the Category 4 road standard and is appropriate for the volume of expected traffic.
- e) According to the Water Resource Protection Plan prepared for the site by Timberland Resource Consultants in November 2017 and revised in May of 2018, the legacy cultivation area(s) are situated in mature oak woodland with slopes of approximately 20%. The new environmentally superior area targeted for consolidating relocated portions of the cultivation sites is located on a natural flat characterized by slopes of less than 15%.
- f) The cultivation of cannabis will not result in the net conversion of timberland. Review of historical satellite imagery shows that the all areas of prior and proposed cultivation have been unforested grassland since at least 2004.

No tree removal is proposed or authorized by this permit.

- g) The location of the proposed cultivation complies with all setbacks required in Section 314-55.4.11.d. It is more than 30 feet from any property line, more than 300 feet from any off-site residence, more than 600 feet from any school, church, public park. The proposed relocation area lies within 600 feet of a Tribal Cultural Resource but will avoid impacts through use of a cultural monitor during ground disturbance and through maintenance of a 100-foot setback. All remaining areas of existing cultivation are located over 600 feet from the nearest Tribal Cultural Resource.

**7. FINDING:**

The ongoing outdoor cultivation of 47,560 square feet of cannabis 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 a road that has been certified to safely accommodate the amount of traffic generated by the proposed cannabis cultivation. The project is conditioned to require the applicant improve the first 50 feet of the private portion of Church Street, approximately 0.17 miles from its intersection with Alderpoint Road. An encroachment through the Land Use Division

of Public Works will be required to complete this work.

- b) The proposed cannabis will not be in a location where there is an established neighborhood or other sensitive receptor such as a school, church, park or other use which may be sensitive to cannabis cultivation. Approving cultivation on this site and the other sites which have been approved or are in the application process will not change the character of the area due to the large parcel sized in the area.
- c) The location of the proposed cannabis cultivation is more than 300 feet from the nearest off-site residence.
- d) Water for irrigation is provided by an existing off-stream rainwater catchment pond with approximately 2,000,000 gallons of storage capacity. Estimated annual water usage is 687,000 gallons. Conditions of approval require that the applicant secure building permits for all structures related to cannabis cultivation, including ponds. Conditions of the permit and water board enrollment require metering of all irrigation-related water use and furnishing those records upon request.
- 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 affected.

**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 an existing residence. The approval of cannabis cultivation on this parcel will not conflict with the ability for the existing residential structures 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 South Fork Eel Planning Watershed, which under Resolution 18-43 is limited to 336 permits and 116 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 76 permits and the total approved acres would be 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 for Steven Earley subject to the conditions of approval attached hereto as Attachment 1A, the Cultivation Operations Plan attached hereto as Attachment 1B, the Site Plan attached hereto as Attachment 1C, and the Relocation and Restoration Plan attached hereto as Attachment 1D.

Adopted after review and consideration of all the evidence on **May 2, 2024**.

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 H. 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.

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John H. Ford, Director  
Planning and Building Department