

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

**Resolution Number 23-
Record Number: PLN-11915-CUP
Assessor's Parcel Number: 216-317-006**

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

WHEREAS, Punta Canna, LLC, submitted an application and evidence in support of approving a Conditional Use Permit for 19,500 square feet (SF) of existing cultivation utilizing light deprivation techniques within 21 greenhouse structures, with 2,000 SF of ancillary propagation proposed. Irrigation water is sourced from a point of diversion located on APN 216-317-004. Existing available water storage is 206,000 gallons in a series of hard-sided tanks. Estimated annual water usage is 228,096 gallons. Drying will occur in a proposed 2,160 square-foot drying building and processing will occur within a proposed 1,140 square-foot structure. A maximum of ten (10) employees may be onsite during peak operations. Power is provided by a 4,000-watt solar array which controls the fans in the greenhouses and supplies the residence with power; 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 January 19, 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 19,500 square feet (SF) of existing cultivation utilizing light deprivation techniques within 21 green house structures, with 2,000 SF of ancillary propagation proposed. Irrigation water is sourced from a point of diversion located on APN 216-317-004. Existing available water storage is 206,000 gallons in a series of hard-sided tanks. Estimated annual water usage is 228,096 gallons. Drying will occur in a proposed 2,160 square-foot drying building and processing will occur within a proposed 1,140 square-foot

structure. A maximum of ten (10) employees may be onsite during peak operations. Power is provided by a 4,000-watt solar array which controls the fans in the greenhouses and supplies the residence with power.

EVIDENCE: a) Project File: PLN-11915-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 Punta Cana 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© of CEQA Guidelines.
 - c) A Site Management Plan (SMP; WDID: 1b170089CHUM) was created for the project by NorthPoint Consulting Group (NorthPoint) dated August 2018 (Attachment 3) that conforms to the requirements of a SMP under Order No. WQ-2017-2023-DWQ and those of a Water Resource Protection Plan (WRPP) in compliance with the North Coast Regional Water Quality Control Board (NCRWQCB) Order No. R1-2015-0023. Conditions of approval require the applicant to comply with the State Water Resources Control Board Cannabis Cultivation Policy, which includes adherence to and implementation of a Site Management Plan.
 - d) California Department of Fish and Wildlife Resource Maps indicate there is the potential for one mapped sensitive species onsite *Howellia auatilis* however this species was removed from the List of Endangered and Threatened Plants effective July 16, 2021. The nearest Northern Spotted Owl (NSO) positive sighting is located approximately 1.06 miles north of the nearest cultivation area, with the nearest NSO activity center mapped to a positive observation is located approximately 1.77 miles away, respectively. Power is supplied by a 4kwt solar panel array that powers fans in the greenhouses and supplies the onsite residence. The applicant plans to transition to include Pacific Gas and Electric (PG&E) by (2027). 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, additionally all lighting will be designed and located so that direct rays are confined to the property as described by the International Dark Sky Association Standards.
 - e) A review of aerial (Satellite) imagery from 2014 through 2021 through the Humboldt County Web GIS portal which provides a series of National Agriculture Imagery Program (NAIP) does not provide any discernible

evidence that timber conversion has occurred onsite for cannabis cultivation activities. No timber conversion activities are planned or proposed as a part of this project. No loss of timber is expected through the proposed and continued use of this project as designed.

- f) A Cultural Resources Investigation was prepared by Archaeological Research and Supply Company August 2019 (on file and confidential), which noted no cultural resources were identified in the study area and concluded that the proposed project will not result in any adverse changes to historical or archaeological resources. The Report, as well as the Bear River Band of the Rohnerville Rancheria, recommended Inadvertent Discoveries Protocol, which has been included as an ongoing condition of approval.
- g) Access to the site is via a private access road 0.17 miles in length via Alderpoint Road a county-maintained category 4 or equivalent road. The application submitted a Road Evaluation Report form with a Route map and photos, dated August 2018 prepared by NorthPoint Consulting Group for the private drive not maintained by the County (Attachment 3). The Road Evaluation Report describes the private access road as meeting a Category 4 road equivalent standard and is adequate for the proposed use. Per comments received from the Department of Public Works, Land Use Divisions, dated May 2019, any existing or proposed non-county maintained access roads that will serve as access for the proposed project that connect to a County-maintained road shall be improved to current standards for a commercial driveway and that private road intersections onto the County road shall be maintained in accordance with County Code section 341-1 (Sight Visibility Ordinance), including the relocation of gates or fences out of the County right of way, which have been included as conditions of approval.

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 Unclassified (U) and Agriculture Exclusive (AE) 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 Unclassified (U) and Agriculture Exclusive (AE) zones in which the site is located.

- EVIDENCE**
- a) The Unclassified (U) and Agriculture Exclusive (AE) Zones are intended to be applied to areas of the County in which general agriculture residential uses are the desirable predominant uses.
 - b) All general agricultural uses are principally permitted in the U and AE zones.
 - 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 19,500 square feet of outdoor cultivation utilizing light deprivation techniques, on a 17.86-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 and AE (HCC 314-55.4.8.2.2).
 - b) The parcel was created in compliance with all applicable state and local subdivision regulations, as it was created and described on Parcel Map 654, Book 005, Parcel map Page 143, Lot 2.
 - c) The applicant originally submitted an application for 19,500 SF of existing outdoor cultivation, which included an existing cannabis cultivation area that was believed to be wholly located on APN 216-317-006. However, a review of the subject site performed by Planning staff found that only 16,500 SF of the cultivation occurred on APN 216-317-006, with an additional 5,325 SF of cultivation occurring on the northern property, identified as APN 216-317-004, in proximity to the shared property boundary line between these two properties. The total cultivation area of 19,500 SF as described for APN 216-317-006 is dependent on the submission and subsequent approval of a lot line adjustment that would seek to move a portion of the northern property boundary line of APN 216-317-006 further north causing the northward adjacent property identified as APN 216-317-004 to retract a portion of the southern property boundary line which will result in all cultivation activities occurring on APN 216-317-006 as proposed. Until this process has been completed, the amount of cultivation allowed by this application will be limited to the existing cultivation amount of 16,500 as approved by the applicant's interim permit.
 - d) Water for irrigation is provided by an onsite point of diversion (POD) registered through the State Water Resources Control Board through a Right to Divert and Use Water (Registration #H503567) which allows for 0.70 acre-feet or 228,096 gallons of water appropriation. The site contains forty (40) 5,000-gallon hard sided water storage tanks providing a total of

200,000-gallons of storage. Conditions of approval require that no more than three gallons per minute (3 gpm) may be diverted at any time, the permittee is required to pass 80% of the flow at all times to keep aquatic species including fish and other aquatic life in good condition below the point of diversion, and water may not be diverted outside of December 1 through March 31. Conditions of approval require the installation of additional water storage to meet annual water demand. Specifically, 22,096 additional gallons of water storage shall be added prior to the 2023 cultivation season to meet annual demand. Should the applicant be unable to demonstrate the additional water storage prior to 2023, the applicant is required to reduce the cultivation area to 17,607 SF, which can be supported by the existing water right until the additional water storage is available for use.

- e) Access to the site is via a private access road 0.17 miles in length via Alderpoint Road a county-maintained category 4 or equivalent road. The application submitted a Road Evaluation Report form with a Route map and photos, dated August 2018 prepared by NorthPoint Consulting Group for the private drive not maintained by the County (Attachment 3). The Road Evaluation Report describes the private access road as meeting a Category 4 road equivalent standard and is adequate for the proposed use. Per comments received from the Department of Public Works, Land Use Divisions, dated May 2019, any existing or proposed non-county maintained access roads that will serve as access for the proposed project that connect to a County-maintained road shall be improved to current standards for a commercial driveway and that private road intersections onto the County road shall be maintained in accordance with County Code section 341-1 (Sight Visibility Ordinance), including the relocation of gates or fences out of the County right of way, which have been included as conditions of approval.
- f) The project parcel is mapped in the County GIS as high instability. The location of existing cultivation is 30% slope or less according to the Site Management Plan prepared by Northpoint Consulting. Conditions of approval require all structures associated with cannabis operations be permitted through the Building Inspection Division according to the California Building Code to ensure structures are constructed in a safe manner.
- g) A review of aerial (Satellite) imagery from 2014 through 2021 through the Humboldt County Web GIS portal which provides a series of National Agriculture Imagery Program (NAIP) does not provide any discernible evidence that timber conversion has occurred onsite for cannabis cultivation activities. No timber conversion activities are planned or proposed as a part of this project. No loss of timber is expected through the proposed and continued use of this project as designed.
- h) The location of the cultivation complies with all setbacks required in Section 314-55.4.11.d. It is more than 30 from any 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

The cultivation of 19,500 SF 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. The project is conditioned to implement the recommendations received from the Department of Public Works, Land Use Divisions, dated May 2019, which will require any existing or proposed non-county maintained access roads that will serve as access for the proposed project that connect to a County-maintained road shall be improved to current standards for a commercial driveway and that private road intersections onto the County road shall be maintained in accordance with County Code section 341-1 (Sight Visibility Ordinance), including the relocation of gates or fences out of the County right of way, which have been included as conditions of approval.
- b) 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.
- 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 onsite point of diversion (POD) registered through the State Water Resources Control Board through a Right to Divert and Use Water (Registration #H503567) which allows for 0.70 acre-feet or 228,096 gallons of water appropriation. The site contains forty (40) 5,000-gallon hard sided water storage tanks providing a total of 200,000-gallons of storage. Conditions of approval require that no more than three gallons per minute (3 gpm) may be diverted at any time, the permittee is required to pass 80% of the flow at all times to keep aquatic species including fish and other aquatic life in good condition below the point of diversion, and water may not be diverted outside of December 1 through March 31. Conditions of approval require the installation of additional water storage to meet annual water demand. Specifically, 22,096 additional gallons of water storage shall be added prior to the 2023 cultivation season to meet annual demand. Should the applicant be unable to demonstrate the additional water storage prior to 2023, the applicant is required to reduce the

cultivation area to 17,607 SF, which can be supported by the existing water right until the additional water storage is available for use.

- 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.

7. 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) Per the Site Management Plan, existing and proposed cultivation activities occur outside of streamside management areas (riparian buffers based on stream class designation) and occur on slopes below 30% with much of the cultivation area (14,400 SF) occurring in areas previously disturbed and graded for use as a mobile home park. The applicant has a final Streambed Alteration Agreement (SAA; Notification No. 1600-2018-0593-R1) for which the project is conditioned to adhere to and implement the maintenance, culvert replacements, and site remediations as detailed in the approved Remediation Plan (approved under the 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.

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 two existing residences. The approval of cannabis cultivation on this parcel will not conflict with the ability for the residences 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 Middle Main Eel Planning Watershed, which under Resolution 18-43 is limited to 360 permits and 125 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 113 permits and the total approved acres would be 45.75 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 Punta Cana, 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 January 19, 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