

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

Resolution Number 23-

Record Number: PLN-12124-CUP

Assessor's Parcel Number: Portion of 216-135-015 and portion of 216-134-013

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

WHEREAS, Myers and Aquarian LLC submitted an application and evidence in support of approving the Conditional Use Permit (PLN-12124-CUP) for 24,000 square feet (SF) of existing light deprivation and outdoor cannabis cultivation, including 20,800 SF of light deprivation cultivation that occurs in twenty-four (24) greenhouses and 3,200 SF of outdoor cultivation that occurs in pots. Propagation is proposed to take place in one (1) nursery area (2,400 SF).

WHEREAS, the County, prepared an Addendum to the Final Mitigated Negative Declaration (MND) 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 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; and

WHEREAS, the Humboldt County Planning Commission held a duly-noticed public hearing on **April 20, 2023**, and reviewed, considered, and discussed the application for the requested Conditional Use Permit and reviewed and considered all evidence and testimony presented at the hearing.

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

1. FINDING:

Project Description: Myers and Aquarian, LLC seeks a Conditional Use Permit to allow the continued operation of 24,000 square feet of outdoor cannabis cultivation in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, Commercial Medical Marijuana Land Use Ordinance (CMMLUO). The site is designated as Agricultural Grazing (AG) in the Humboldt County 2017 General Plan Update and zoned Agriculture Exclusive (AE) and Timberland Production Zone (TPZ) with Special Building Site B-5(160). Outdoor cannabis cultivation will occur in light deprivation greenhouses and full sun. Propagation will take place within a proposed 2,400-square-foot greenhouse, or alternatively plants will be propagated on another parcel in the vicinity (APN 216-081-013) through a permitted commercial nursery. Artificial lighting used for ancillary propagation and processing will adhere to shielding and International Dark Sky Association standards as set forth in the CMMLUO. Processing such as drying and curing is proposed onsite. Further processing such as trimming is proposed offsite at a licensed processing facility. The applicant anticipates two (2) full-time employees, and at peak operations four (4) employees will be required for operations annually. Power for the project is provided by a solar power and a generator. The applicant is proposing a transition to PG&E power within the next five years, and to further develop solar power if PG&E is unavailable. The generator will be stored in a shed and kept in secondary containment. Noise levels shall not exceed no

more than 60 decibels at the property line.

EVIDENCE: Project File: PLN-12124-CUP

2. FINDING: **CEQA.** The requirements of the California Environmental Quality Act have been met. The Humboldt County Planning Commission has considered the Addendum to and the MND prepared for the CMMLUO adopted by the Humboldt County Board of Supervisors on January 26, 2016.

EVIDENCE:

- a) Addendum to the MND prepared for the proposed project in compliance with CEQA.
- 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 Biological Scoping Report was prepared by Kelsey McDonald of Hohman & Associates, a California Native Plant Society (CNPS) Certified Consulting Botanist. The Report identifies the habitats and potentially occurring special-status wildlife species within the project area, potential impacts of cultivation activities on biological resources, and measures to reduce any potential impacts. Recommended mitigation measures have been included as recommended conditions of approval. The measures include conducting pre-construction raptor & bird surveys, restoring the cultivation areas, and minimizing noise disturbance. The Report also recommends that a site survey be conducted by a qualified biologist to further evaluate potential habitat value to the protected species within the project area and finalize recommended measures.

The Biological Assessment Area (BAA) includes a 1.3 mile buffer area surrounding the property. A list of special status species that could potentially occur in the project area was generated in 2019 using the CDFW California Natural Diversity Database (CNDDDB), which includes the California Native Plant Society (CNPS) and the Northern Spotted Owl (NSO) databases. A complete list of species that could occur within the BAA are listed on pages 3-4 of the Report.

A NSO habitat assessment was conducted by Kelsey McDonald of Hohman & Associates in 2019, and there were no NSO database activity centers recorded within 1.3 miles of the cultivation area. However, there is potential nesting/roosting and foraging habitat within the 1.3 mile buffer. The US Fish and Wildlife Service Protocol (2021) recommends NSO surveys that may impact owls by modifying their habitat or disrupting breeding activities. However, the cultivation area within the parcel consists of open grasslands classified as 'non-habitat', so construction activities are not expected to modify NSO habitat. Cultivation activities propose no supplemental lighting, so the disturbance from light pollution is expected to be minimal. The applicant is conditioned to restrict noise to adhere to Humboldt

County Performance Standards. The biologist recommends that additional assessments and/or surveys are conducted for any plans that may modify habitat, remove nest trees, or disturb potential breeding habitat. Therefore, project activities would have less than a significant impact on NSO activities and habitat.

- d) The project is located in the Bear River Band Rancheria Aboriginal Ancestral Territory. The project was referred to the Northwest Information Center and the Bear River Band. The applicant submitted a Cultural Resource Study prepared by William Rich and Associates dated September 2019. No archaeological, historical, or tribal resources were identified within the proposed cultivation areas or elsewhere on the parcel during the field survey. Standard Inadvertent Discovery Protocol has been included as a recommended condition of approval.

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 Agricultural Exclusive Minimum Building Site (AE-B-5-160) and Timberland Production Zone (TPZ) zoning district. The proposed cannabis cultivation, an agricultural product, is within land planned and zoned for agricultural purposes. Therefore, the project is consistent with the Open Space Plan and its Open Space Action Program.

4. FINDING

The proposed development is consistent with the purposes of the existing Agricultural Grazing (AG) land use designation in which the site is located.

EVIDENCE

- a) General agriculture is an allowable use type in Agricultural Grazing (AG) land use designations. The proposed cannabis cultivation, an agricultural product, is within land planned and zoned for agricultural uses.
- b) Humboldt County Code section 314-55.4.8.2.2 allows cultivation of up to 43,560 SF of existing outdoor cannabis on a parcel zoned AE and TPZ over five (5) acres in size, 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 24,000 SF of existing cultivation (20,800 SF light deprivation and 3,200 SF outdoor cultivation) on a parcel over 5 acres in size is consistent with the Humboldt County Code 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 Agricultural Exclusive Minimum Building Site (AE-B-5-160) and Timberland Production Zone (TPZ) (HCC 314-55.4.8.2.2).

- b) The parcel is a legal parcel as demonstrated by Certificate of Subdivision Compliance 2019-008922, recorded May 23, 2019.
- c) Irrigation water is currently sourced from a surface water diversion (Registration #H502326) and a permitted well (No. 20/21-0163). The appropriate water right (Registration # H502326) has been obtained for one (1) surface water diversion on the subject parcel, and two (2) diversions on the adjacent property under the same ownership (APN 216-081-013). The water right allows up to 4 acre-feet per year to be used on both the subject parcel (APN 216-135-015) and as the adjacent parcel (APN 216-081-013). Although the water right does not include the specific allotment of water for this parcel, the irrigation needs of cannabis activities on the adjacent parcel (216-081-013) are supplied by rainwater catchment and a groundwater well. The allotment of 4.011 acre feet exceeds projected irrigation needs by approximately 1.03 million gallons.

Projected annual water use is 270,000 gallons as shown in Table 1 below. The applicant has proposed to utilize a 6 million gallon on stream pond from a neighboring property (APN 216-135-008) under the same ownership to supply irrigation needs. The use of the pond is contingent upon approval from CDFW and the State Water Resources Control Board, and if approved the applicant will be required to bypass all inflow to the pond during the annual surface water diversion forbearance period. If the applicant is unable to obtain approval for use of the pond, the applicant has proposed to install hard water tank storage to meet the projected 270,000 gallon irrigation need. The applicant has proposed to fill the 270,000 gallons of water storage with 50% rainwater catchment and the remainder will be sourced from the existing irrigation water right. The applicant has submitted rainwater catchment calculations demonstrating over 50% of the projected irrigation needs can be collected during drought years.

- d) The cultivation of cannabis will not result in the net conversion of timberland. The proposed cultivation area(s) are located within a historical cultivation area or are being relocated to areas outside the Timberland Production Zone.
- e) 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, more than 300 feet from any offsite residence, and more than 600 feet from any school, church, public park, or Tribal Cultural Resource.

6. FINDING

The cultivation of 24,000 SF of cannabis and the conditions under which it may be operated and 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 accessed by a county-maintained road (Harris Road) that has been assessed by a Road Evaluation Report by NorthPoint Consulting Group and the County Department of Public Works, which determined the main access road to the project area is developed to

the equivalent of a road category 4 standard.

- b) The location of the proposed cannabis cultivation is more than 300 feet from the nearest offsite residence.
- c) Water is sourced from an on stream reservoir on an adjacent parcel subject to review and approval from CDFW and the State Water Resources Control Board. If the reservoir cannot be approved, the applicant has proposed to source 50% of the irrigation needs from rainwater catchment, and 50% of the irrigation needs from an existing surface water diversion for which the applicant has demonstrated a valid water right in amounts appropriate for cultivation.
- d) Provisions have been made in the applicant's proposal to protect water quality through yearly site inspection, monitoring, and reporting to the North Coast Regional Water Quality Control Board (NCRWQCB). The applicant has submitted a Notice of Applicability and Site Management Plan.
- e) A Lake and Streambed Alteration Agreement (LSAA) was filed with CDFW (LSAA No. 1600-2018-0422-R1).

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

The parcel was not included in the 2019 Adopted Housing Element Inventory. The approval of cannabis cultivation on this parcel will not conflict with the operation or use of the existing residential units on site.

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

This project site is located in the Middle Main Eel planning watershed which is limited to 360 permits and 125 acres of cultivation. If approved, the Middle Main Eel planning watershed would have 102 approved permits for a total of 41 acres.

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 approve the Conditional Use Permit (PLN-12124-CUP) for Myers and Aquarian, LLC subject to the conditions of approval attached hereto as Attachment 1A and incorporated herein by reference; and

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