

**Recommended Planning Commission Action:**

1. Describe the application as part a public hearing;
2. Request that staff present the project;
3. Open the public hearing and receive testimony; and
4. Close the hearing and take the following action to approve the application:

*Adopt the Resolution to 1) find that the Commission has considered the Addendum to the adopted Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) pursuant to Section §15164 of the State CEQA Guidelines, 2) make all of the required findings for approval of the Conditional Use Permit and Special Permit, and 3) approve the Georgi Stoyanov project as recommended by staff subject to the recommended conditions.*

**Executive Summary:** Georgi Stoyanov seeks a Conditional Use Permit to allow the continued cultivation of 11,600 square feet (SF) of outdoor cannabis 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 applicant also seeks a Special Permit for development within the Streamside Management Area (SMA) for continued use and maintenance of the points of diversion (see Water Resources discussion below for additional information). The site is designated as Residential Agriculture (RA40) in the Humboldt County 2017 General Plan Update and zoned Forestry Recreation with a minimum 40-acre building site (FR-B-5(40)). Cultivation takes place in one (1) area within the southeastern portion of the parcel within three (3) greenhouses utilizing light deprivation techniques. No separate ancillary propagation areas will be utilized and any ancillary propagation up to 1,200 SF will occur within existing greenhouses. Two (2) harvests are anticipated annually for the light deprivation greenhouses for a growing season that extends from April through October.

Drying and bucking occurs onsite within a 1,750-foot agriculture accessory structure; all other processing will occur offsite at a licensed processing or manufacturing facility. A maximum of three (3) people will be onsite during peak operations. Power is provided by Pacific Gas and Electric Company (PG&E). The operation is secured behind a gated access, and product and storage areas are locked.

**Timber Conversion**

A review of available satellite imagery dating back to 2004 shows that a total of five (5) trees were removed during the development of the cultivation areas between 2010 - 2012. The project is conditioned to require the property be evaluated by a Registered Professional Forester (RPF) to determine the amount of timber conversion that occurred and submit a Timber Conversion Report address previously unpermitted timber conversion. It does not appear any timber removal occurred after January 1, 2016. The applicant is required to adhere to and implement any recommendations by the RFP once the tree removal is evaluated.

**Water Resource**

Estimated annual water usage is 164,100 gallons (14.14 gal/SF) with peak demand occurring in July and August at approximately 36,000 gallons. Onsite available water storage is 65,000 gallons in various hard-sided tanks, which constitutes 39.61% of the annual water demand. Water for irrigation is provided by a permitted groundwater well (Permit No. 18/19-1053; Attachment 3) and three (3) registered points of diversion (Certificate No. H100939) (Attachment 3). The applicant also seeks a Special Permit for development within the Streamside Management Area (SMA) for the continued use and maintenance of the points of diversion. As depicted on the Site Plan, the project site contains several Class III watercourses and is directly adjacent to the Mattole River, a Class I waterway, which makes up a portion of the western boundary of the parcel.

A Final Streambed Alteration Agreement (FSAA) was issued by the California Department of Fish and Wildlife (CDFW; Notification No. 1600-2017-0156-R1) in September 2017 (Attachment 3) for the existing stream diversions, including use and maintenance of the water diversion infrastructure. Per the FSAA, the applicant is required to forebear from May 15 to October 15 annually; however, the applicant is permitted to divert up to 150 gallons per day during this period for domestic use only. The applicant has obtained a Right to Divert and Use Water from the State Water Resources Control Board (SWRCB), which allows for 97,775 gallons of water to be diverted annual from the three PODs and up to 48,878 gallons can be diverted to storage. The groundwater well produces the additional 66,375 gallons to meet the water demand. Additionally, the project is conditioned to implement all terms and conditions of the FSAA and the Right to Divert and Use Water. By adhering to the terms and conditions of these documents, which limit the diversion amount and duration in addition to the specifying the use of intake structures that will not impact aquatic species, Planning staff determined that impacts to the watershed are minimized allowing the use of point diversion pursuant to a Special Permit.

The project also utilizes a permitted groundwater well that is registered with the California Department of Water Resources (Permit No. 18/19-1053, WCR2019-010444). According to the Plot Plan, the well is located to the northwest of the cultivation area, approximately 35 feet southwest and on grade with the nearest SMA. The Well Completion Report states the well is 240 feet deep and drilled through clay, sandstone, and shale. Water is found at 68 feet, and a blank is installed for the first 60 feet of depth and a screen installed from 60 to 240 feet. According to the well completion report, the well produces 4 gallons per minutes, which should produce sufficient water for irrigation. Based on the distance from the nearest watercourse, Planning staff determined the well has the potential to be hydrologically connected to surface waters. Conditions of approval require that prior to use of the well for cultivation activities outside of the forbearance period, the applicant must submit a report from an appropriate professional documenting evidence showing the well is likely not hydrologically connected to surface waters. Until such time, and/or if it cannot be shown the well is not likely to be hydrologically connected to surface waters it shall require additional water rights from the State Water Resources Control Board and be subject to forbearance or water storage requirements. The applicant is also required to increase water storage by 99,100 gallons should the well be hydrologically connected to surface water to ensure there is sufficient water storage to meet annual water demand. Conditions of approval require the applicant to monitor water use from the stream and the groundwater well to demonstrate there is sufficient water available to meet operational needs and that water diverted to storage complies with the Right to Use and Divert Water.

A Water Resources Protection Plan (WRPP) was prepared by Timberland Resource Consultants in September 2017 and revised in July 2018 (Attachment 3) for the subject site, pursuant to North Coast Regional Quality Control Board (NCRWQCB) Order No. R1-2015-0023. The WRPP identified twenty-three (23) places onsite requiring corrective actions, including: rock armor spillways, install erosion control measures, upgrade and maintain culverts, provide secondary containment for fuel tanks, regrading of roads to prevent discharge, and relocate all storage areas outside of the SMA. The project is conditioned to implement all remaining corrective actions detailed in the WRPP.

In addition, the Cultivation plan states that consolidation of cultivation areas has taken place. This relocation was performed to centralize cultivation activities in an environmentally superior location to decrease the potential for runoff, reduce the overall cultivation footprint, and reduce vehicle travel onsite. The project is conditioned to provide, within 90 days, an updated site plan depicting all onsite structures and decommissioned cultivations areas, as well as a Remediation Plan detailing any remediation efforts that have occurred and/or are proposed for the decommissioned areas. Conditions of approval also require the applicant to comply with the State Water Resources Control Board Cannabis Cultivation Policy, which includes development of a Site Management Plan.

### **Biological Resources**

Per review of CDFW's California Natural Diversity Database (CNDDDB) in October 2021, the Mattole River, which makes up the western edge of the parcel, is habitat for summer-run steelhead (*Oncorhynchus mykiss*) and the nearest NSO activity center is located approximately 3.20 miles from the nearest

cultivation area, with the nearest NSO sighting located approximately 2.10 miles away. Per the Cultivation and Operations Plan, power is sourced from PG&E. The project is conditioned to ensure the combination of background, generator and greenhouse fan, or other operational equipment created noise, meets the noise level threshold of a maximum of 50 decibels at the property line. Conformance will be evaluated using current auditory disturbance guidance prepared by the United States Fish and Wildlife Service (USFWS). Additional conditions of approval require the applicant to refrain from using synthetic netting, ensure refuse is contained in wildlife proof storage, refrain from using anticoagulant rodenticides, and prepare and implement various erosion and sediment control measures 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.

### **Access**

Access to the site is via an access road from Dutyville Road (a private road) from Ettersburg Honeydew Road, a County maintained category 4 roadway. A Road Evaluation Report for a 0.7-mile segment of Dutyville Road to the subject property was prepared by the applicant in January 2020 (Attachment 3), which indicates that the roadway is developed to the equivalent of a road Category 4 standard or better. The submitted road evaluation included sufficient photographic evidence to verify the roadway condition as described, including roadway width and line of sight.

Additionally, due to the number of cultivation projects along Dutyville Road, both approved and pending, conditions of approval require the applicant to take steps to form or join a Road Maintenance Association for the maintenance of Dutyville Road. The necessary steps include sending notices to all road users of the requirement to form a Road Maintenance Association and conducting a meeting with the users of the road, especially those engaged in commercial cannabis activities to discuss formation of the Road Maintenance Association. The applicant shall provide evidence, including notice, meeting minutes, and the decision as to whether a Road Maintenance Association is being formed to show this effort. In the event the applicant is unable to coordinate formation a Road Maintenance Association, the applicant shall pay fair-share cost for maintenance of the road to any road user engaged in maintaining the road.

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. The project site is located in the Cape Mendocino Planning Watershed, which under Resolution 18-43 is limited to 650 permits and 223 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 196 permits and the total approved acres would be approximately 69 acres of cultivation.

Environmental review for this project was conducted and based on the results of that analysis, staff finds that all aspects of the project have been considered in a previously adopted Mitigated Negative Declaration that was adopted for the Commercial Medical Marijuana Land Use Ordinance and has prepared an addendum to this document for consideration by the Planning Commission (See Attachment 2 for more information).

Based on a review of Planning Division reference sources and comments from all involved referral agencies, Planning staff believes that the applicant has submitted evidence in support of making all of the required findings for approval of the Conditional Use Permit (CUP) and Special Permit (SP).

**ALTERNATIVES:** The Planning Commission could elect not to approve the project, or to require the applicant to submit further evidence, or modify the project. If modifications may cause potentially significant impacts, additional CEQA analysis and findings may be required. These alternatives could be implemented if the Commission is unable to make all of the required findings. Planning staff has stated that the required findings in support of the proposal have been made. Consequently, Planning staff does not recommend further consideration of any alternative.

The Planning Commission could also decide the project may have environmental impacts that would require further environmental review pursuant to CEQA. Staff did not identify any potential impacts. As the lead agency, the Department has determined that the project is consistent with the MND for the CMMLUO as stated above. However, the Commission may reach a different conclusion. In that case, the Commission should continue the item to a future date at least two months later to give staff the time to complete further environmental review.