

**Recommended Planning Commission Action:**

1. Describe the application as part of the Consent Agenda.
2. Survey the audience for any person who would like to discuss the application.
3. If no one requests discussion, make the following motion to approve the application as a part of the consent agenda:

*Find that the Planning Commission has considered the Addendum to the adopted Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) as described by Section §15164 of the State CEQA Guidelines, make all of the required findings for approval of the Conditional Use Permit and adopt the Resolution approving the Bear Creek Ranch Farm, Inc., project as recommended by staff subject to the recommended conditions.*

**Executive Summary:** Bear Creek Ranch Farm, Inc., seeks a Conditional Use Permit to allow the continued cultivation of 12,420 square feet (SF) of outdoor cannabis and 1,200 SF of ancillary propagation (for a total of 13,620 SF of onsite 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 Residential Agriculture (RA40) in the Humboldt County 2017 General Plan Update and zoned Forestry Recreation with a 40-acre minimum Special Building Site combining zone (FR-B-5(40)). Currently, cultivation takes place in the eastern portion of the site within three (3) existing metal greenhouse structures totaling 12,490 SF: Greenhouse #1 - 34'x145' (4,930 SF); Greenhouse #2 - 34'x145' (4,930 SF); and Greenhouse #3 - 20'x128' (2,560 SF). Ancillary propagation occurs within a separate existing 1,200 SF (20'x60') greenhouse. Two (2) harvests are anticipated annually for a growing season that extends from April through October.

Cannabis will be harvested, cured, and dried in an existing 441 SF (21'x21') drying room onsite. The dried cannabis will be trimmed in an existing 1,200 SF two-story structure; each floor measures out to be 600 SF. Additional structures associated with the cultivation activities include: 220 SF (20'x22') and 200 SF (8'x20') storage sheds used for cultivation related materials, and a 120 SF (10'x12') fuel storage shed. A maximum of three (3) employees may be utilized during peak operations. Power is provided by three (3) generators, a small photovoltaic solar system, and one (1) 45kw diesel generator reserved for emergency purposes only. The applicant proposes to expand the onsite photovoltaic solar system to reduce the carbon footprint and eliminate the use of generators (except for emergency purposes) by 2026 (see additional discussion below under *Energy Resources*). The operation is enclosed in a secure privacy fence. The entry gate remain locked at all times and access to the cultivation areas is limited exclusively to employees.

**Cultivation and Nursery Space**

As noted above, the application is for 12,420 SF of existing outdoor cannabis cultivation and 1,200 SF of ancillary propagation. The onsite nursery equates to approximately 9.7% of the total current cultivation area, which complies with what Planning division staff and the Planning Commission have found allowable in the past (i.e., a nursery space of 10% of the cultivation area). Based on the County's cultivation area verification, 12,500 SF of cultivation was in existence prior to the CMMLUO environmental baseline date of January 1, 2016. Because the parcel is over 5 acres in size, zoned FR, and irrigation water is sourced from a non-diversionary source, and the cultivation is located on a graded pad with less than 5% grade, new cultivation could occur on the subject parcel. Therefore, planning staff is supportive of the propagation area.

**Energy Resources**

The applicant provided an *Energy Generation and Consumption Plan* dated October 25, 2021 (see Attachment 3). As previously stated, power is provided by three (3) generators, a small photovoltaic solar system, and one (1) 45kw diesel generator reserved for emergency purposes only. One (1) Honda

EU7000i generator, one (1) EU3000 generator, one (1) Honda EU2000w generator, and the photovoltaic solar system power the propagation greenhouse lighting; water and air pumps; atomizer; fans; power tools; dehumidifiers; cannabis trimming machine and all electrical supplies and equipment; and all domestic power for the onsite residence. **Table 1** illustrates the overall power consumption for cannabis operations and domestic use. The generators associated with the cultivation activities are stored in two (2) sheds: one (1) 36 SF (6'x6') and a 16 SF (4'x4').

**Table 1: Energy Consumption Table**

Type of Power Use	Hours Per Month for Cannabis Operation Use Only												Total
Generator	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Honda EU7000i	0	0	124	180	186	120	0	0	0	128	124	0	1,283 hours
Honda EU3000	0	0	62	60	62	60	186	186	186	62	0	0	858 hours
Honda 2000w	0	0	10	8	10	8	10	10	8	10	0	0	74 hours
<b>Total Hours of Energy Generation Operations</b>	<b>0</b>	<b>0</b>	<b>186</b>	<b>240</b>	<b>186</b>	<b>192</b>	<b>186</b>	<b>186</b>	<b>180</b>	<b>190</b>	<b>124</b>	<b>0</b>	<b>1,744 Hours</b>
Type of Power Use	Hours Per Month for Domestic Use Only												Total
Generator	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Honda EU 7000i	196	178	196	190	196	190	196	196	190	196	190	196	2,310 hours
<b>Total Hours of Energy Generation Domestic Use</b>	<b>196</b>	<b>178</b>	<b>196</b>	<b>190</b>	<b>196</b>	<b>190</b>	<b>196</b>	<b>196</b>	<b>190</b>	<b>196</b>	<b>190</b>	<b>196</b>	<b>2,310 Hours</b>
<b>Total Hours of Energy Generation Property Use</b>	<b>196</b>	<b>178</b>	<b>382</b>	<b>430</b>	<b>382</b>	<b>382</b>	<b>382</b>	<b>382</b>	<b>370</b>	<b>386</b>	<b>314</b>	<b>196</b>	<b>4,054 Total Hrs/Yr</b>

The applicant is currently working on a solar management plan to reduce the carbon footprint and eliminate the generator use except for emergency purposes only. As provided in the applicant's Energy Generation and Consumption Plan dated October 2021 (Attachment 3), the applicant anticipates an expansion of the photovoltaic solar system consisting of sixteen (16) 250w photovoltaic panels and sixteen (16) deep cycle batteries. The project anticipates the solar system installation and operational by 2026. By 2026, only one (1) generator will be onsite as back-up power source and for low solar output. Conditions of approval require the applicant to adhere to and implement the Energy Generation and Consumption Plan and provide the solar management plan upon completion. The applicant is also required to demonstrate the solar system is installed and supporting the operation prior to the 2026 cultivation season (**Condition of Approval #8**).

**Timber Conversion**

Based on review of historic aerial imagery dating back to 2004, timber conversion has occurred onsite in order to accommodate the existing cultivation area in the southeastern portion of the subject property. It appears this conversion occurred sometime between 2014 and 2016. A Less Than Three Acre Conversion Exemption was applied for but not finalized by the California Department of Forestry and Fire Protection (CAL FIRE) in January 2016 (Attachment 3), which accounted for 2.4 acres of timberland to be converted. The submitted map included with the Less Than Three Acre Conversion Exemption application indicated the location of the proposed conversion area to be within the southeastern portion of the property, similar to the area converted. The conversion does not appear to have occurred after the CMMLUO environmental baseline date of January 1, 2016, based *Dinsmore Petruskevici: Quantifying Historic Cannabis Cultivation prepared by Archeological Research and Supply Company* received November 29, 2018 (see Attachment 3). No additional tree removal is proposed or authorized by this permit.

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 prior to and after the CMMLUO

baseline date of January 1, 2016, and obtain a Timber Conversion Report prepared by a RPF to address previously unpermitted timber conversion. The applicant/owner will be responsible for mitigating the environmental impacts not analyzed in the environmental document prepared for the CMMLUO. The applicant/owner shall be required to re-stock an area onsite equivalent to the amount of area converted after the CMMLUO baseline date at a rate of 3:1. Additionally, the project is conditioned to require preparation of a Restocking Plan within 90 days of project approval and implement the Restocking Plan within a period of two (2) years, should any timber conversion be determined to have occurred after the CMMLUO baseline date (**Condition of Approval #17**). The Restocking Plan shall include details on the locations and total areas to be restocked, the type, number, and spacing of the plantings, and a monitoring plan for three (3) years which includes performance evaluations, performance standards, and contingency measures should performance standards not be met. The Report shall include monitoring and reporting requiring a minimum of 3 years of monitoring at an 85% success rate and submission of annual monitoring reports at the time of the annual inspection (**Condition of Approval #17**).

### **Water Resources**

Estimated annual water usage for cultivation irrigation is 125,089 gallons (10.1 gal/SF) with peak demand occurring in July at approximately 28,400 gallons. Water for irrigation is provided by a 250,000-gallon rainwater catchment pond located in the southeastern corner of the subject parcel. A permitted groundwater well (15/16-0383) is onsite and registered with the California Department of Water Resources (WCR2016-003056) that provides for water only for domestic use and fire suppression. The rainwater catchment pond is the primary water source for irrigation use.

In addition to the 250,000-gallon rainwater catchment pond, onsite water storage includes ten (10) 3,000-gallon high density polyethylene (HDPE) water tanks and two (2) 1,550-gallon HDPE water tanks that stores irrigation water for a total of 283,100 gallons of onsite water storage for irrigation. One (1) 1,550-gallon HDPE water tank filled from the groundwater well is for domestic use only and one (1) 20,000-gallon water storage bladder (filled from the groundwater well) is dedicated for fire suppression to protect the parcel. The projected annual water usage for cultivation is approximately 125,089 gallons. Water management strategies are adhered to conserve and reuse onsite water to achieve net zero discharge. As such, Planning staff has determined there is sufficient water storage onsite to serve the project. Conditions of approval require the applicant to monitor water use from the pond and water storage tanks annually to demonstrate there is sufficient water available to meet operational needs (**Condition of Approval #22**).

A Final Streambed Alteration Agreement (FSAA) with the California Department of Fish and Wildlife (CDFW; Notification No. 1600-2016-0229-R1) was issued in November 2016 (Attachment 3) for two (2) encroachments. One (1) encroachment is for a water diversion from a Class II tributary to the Mad River that is not currently being used for irrigation but is listed on the Site Plan located in the southwestern portion of the parcel. Water diversion is to be used for domestic purposes only. Work for the water diversion will include use and maintenance of the water diversion infrastructure. The other encroachment includes replacement of a failing 12" diameter culvert with a minimum 24" diameter culvert or a rocked ford. The work for this project will include excavation, placement of the culvert or rock armoring, and relocation of the fill material. A condition of approval is recommended to require the applicant adhere to and implement the FSAA and comply with all applicable terms (**Condition of Approval #11**).

A Site Management Plan (SMP) was prepared by Timberland Resource Consultants in February 2020 (Attachment 3) for the subject site in response to the State Water Resources Control Board (SWRCB) Cultivation Policy, in congruence with Order WQ 2019-0001-DWQ General Waster Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (General Order). The subject project was previously enrolled in the North Coast Regional Water Quality Control Board (NCRWQCB) No. R1-2015-0023 under WDID-1B16892CHUM and has since enrolled with SWRCB as WDID-1\_12CC417903. Currently, some Best Practicable Treatment or Control (BPTC) measures and monitoring reporting has been completed and are continually being implemented. A SMP Implementation and

Mitigation Reporting chart are included within the SMP. The SMP did not identify any specific locations onsite that are currently out of line with the requirements as outlined in the General Order. The SMP did, however, outline specific Best Practicable Treatment or Control measures (BPTC) to be utilized onsite including the installation and maintenance of one (1) identified watercourse crossing. The culvert at the watercourse crossing was upgraded. The encroachment replacement work was finalized in the FSAA (No. 1600-2016-0229-R1) to ensure they are functioning properly and needed replacement outside of the rainy season. There are Best Management Practices (BMPs) and BPTCs included for chemical storage and use, petroleum product storage and use, winterization measures, erosion control, permanent culvert crossing, and cultivation site restoration that the project is required to implement and adhere to. A Water Resource Protection Plan (WRPP) was previously prepared by Timberland Resource Consultants in February 2016 (Attachment 3), which identified numerous items requiring remediation, including but not limited to upgrading existing culverts, stream crossing maintenance, cultivation waste and waste containment, covering and installing secondary containment on fuel tank, and installation of erosion control measures. As such, the project is conditioned to adhere to and implement the BMPs and BPTCs described in the SMP and implement any remaining corrective actions identified in the WRPP (**Condition of Approval #10**).

As depicted on the Site Plan, two (2) watercourses, a Class III and Class II, traverse the central portion of the subject site. As described in the SMP, the cultivation activities were noted to be approximately 80 feet and over 200 feet from the Streambed Management Area (SMA) of the nearest Class III and Class II watercourses. The respective 200 feet distance of the SMA buffer provide a suitable buffer between cultivation operation and habitat shown on the Site Plan.

### **Biological Resources**

Per review of CDFW's California Natural Diversity Database (CNDDDB) in December 2021, there are no mapped sensitive species onsite and the nearest NSO activity center is located approximately 1.8 miles from the nearest cultivation area, with the nearest NSO sighting located approximately 1.65 miles away. As previously discussed, power for all cultivation and domestic uses is provided by three (3) generators, a small photovoltaic solar system, and one (1) 45kw diesel generator reserved for emergency purposes only. Use of the onsite generators follows all Humboldt County and State of California guidelines. The generators are located away from the property line and are located within an enclosed shed to control the noise level. Fuel is located in a secure shed with secondary containment. By 2026, the applicant is proposing to expand the photovoltaic solar system to reduce the carbon footprint and eliminate the generator use except for emergency purposes only. Artificial lighting is utilized in the ancillary propagation area to assist with the propagation of vegetative plants; however, light shielding is implemented, such as use of black out tarps with secured ends. A Lighting Management Plan has been implemented to be used in the selection, placement, installation, and operation of all mixed light cultivation areas. The project is conditioned to continually implement the Lighting Management Plan (**Condition of Approval #15**), found in the Revised Cultivation and Operations Plan in Appendix G (Attachment 3). Additional conditions of approval require the applicant to implement noise and light attenuation measures, refrain from using synthetic netting, ensure refuse is contained in wildlife proof storage, and refrain from using anticoagulant rodenticides to further protect wildlife (**Condition of Approval #17**). 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 subject site is from a private driveway via Anderson Ford Road from Bear Creek Road from State Highway 36. State Highway 36 is maintained by the California Department of Transportation (Caltrans). Anderson Ford Road and Bear Creek Road are both private roads. The applicant prepared and submitted a Humboldt County Department of Public Works Road Evaluation Report, dated 3/15/22 (Attachment 3), for a 3.38-mile segment of Bear Creek Road, from State Highway 36 to Anderson Ford Road, which indicates the roadway meets a Category 4 road equivalent standard and is adequate for the proposed use identifying the road access to be equivalent of a road Category 4 standards from State Highway 36 to Bear Creek Road to Anderson Ford Road along the road. A Road Evaluation accompanied with photos of Bear Creek Road was conducted on 3/20/19 for an adjacent cultivation

property (APN 208-271-007; Attachment 3) located in the southeastern direction of the subject parcel. The Road Evaluation along the Bear Creek Road that runs through the adjacent property maintains that the road segment meets a Category 4 road equivalent standards and is adequate for the proposed use. Comments received from the Department of Public Works, Land Use Division, dated 11/9/20, reference Humboldt County Code Section 3112-5, regarding roadway grades in excess of 16%, which must be paved and have an exception request approved, and advises the applicant of potential dust generation and associated impacts. Further, since there are more than one road evaluation along Bear Creek Road, all the recommendations in the various road evaluations reports shall be combined into one action plan, as recommended by the Department of Public Works, which has been included as a condition of approval (**Condition of Approval #13**).

Additionally, the comments state,

*"If a Road Maintenance Association (RMA) will not be responsible for constructing all of the improvements in the action plan, it is recommended that the proportioning of the improvements be clearly documented so that each applicant knows exactly what portion of the action plan that they are responsible for constructing."*

Due to the number of cultivation projects along Bear Creek Road, both approved and pending, Planning staff recommends a condition of approval to require the applicant take steps to form or join a Road Maintenance Association for the maintenance of Bear Creek Road (**Condition of Approval #10**). 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.

#### **Consistency with Humboldt County Board of Supervisors Resolution No. 18-43**

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 Mad River Planning Watershed, which under Resolution 18-43 is limited to 334 permits and 115 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 66 permits and the total approved acres would be 24.76 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).

**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.