

Recommended Zoning Administrator 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 Zoning Administrator 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 Special Permits and adopt the Resolution approving the Kenneth Holland project as recommended by staff subject to the recommended conditions.

Executive Summary: Kenneth Holland seeks a Special Permit to allow the continued cultivation of 8,320 square feet (SF) of existing mixed light cannabis cultivation and 832 SF of ancillary propagation, for a total of 9,152 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). Special Permits are also requested for development in the Streamside Management Area (SMA) related to continued use and maintenance of two (2) points of diversion for irrigation and future installation, use, and maintenance of hydropower infrastructure. The site is designated as Residential Agriculture (RA40) in the Humboldt County 2017 General Plan Update and zoned Unclassified (U). Mixed light cultivation occurs in the northern and central portions of the subject property within six (6) greenhouses. Ancillary propagation occurs within an additional greenhouse totaling 832 SF. Two (2) harvests are anticipated annually for a growing season that extends from January through October.

Drying and curing occurs onsite in a 600 SF (12'x50') structure located between the two cultivation areas. All other processing currently occurs offsite at a licensed processing or manufacturing facility. A maximum of four (4) people will be onsite during peak operations. Power is provided by one (1) 10-kilowatt (kW) generator, and there are long-term plans to add solar and hydropower. The operation is secured behind gated access and someone is typically onsite at all times.

Propagation Area

As noted above, ancillary propagation associated with the operation currently occurs in an 832 SF (8'x104') greenhouse located within Cultivation Area #2, north of the mixed light greenhouses. The nursery space equates to 10% of the cultivation area, which is what Planning staff and the Planning Commission have found allowable in the past. With the ancillary propagation space included, there is a total of 9,152 SF of onsite cultivation; however, based on the County's cultivation area verification, only 8,320 SF was in existence prior to the CMMLUO environmental baseline date of January 1, 2016. Because the parcel is zoned U, over 5 acres in size, and the existing cultivation is located on graded flats where the slope is less than 15%, new cultivation could be allowable on the subject parcel. Therefore, Planning staff supports allowing ancillary propagation up to 10% of the cultivation area (or 832 SF), for a total of 9,152 SF of onsite cultivation.

Onsite Relocation and Remediation

As described in the Site Management Plan (SMP; WDID 1_12CC407765) prepared by Timberland Resource Consultants in April 2019 (Attachment 3; discussed further below under "Water Resources"), cultivation areas associated with Cultivation Areas A and B, in addition to cannabis-related materials and refuse, were found to be within a watercourse and required Streamside Management Area (SMA) buffers associated with Blue Slide Creek (Class I) and Class II and Class III watercourses. The SMP includes various recommendations to further protect water quality and bring the project into compliance with required standards, including but not limited to gathering and properly dispose of refuse, relocating cultivated-related infrastructure outside of the required riparian setbacks, and removing the unused

point of diversion and associated poly-pipe located within a watercourse. As described further below, the project is conditioned to implement all remaining corrective actions detailed in the SMP to minimize any potential impacts associated with the project and minimize runoff into nearby SMAs, which includes relocating all cultivation-related infrastructure outside of the required SMA setbacks. The applicant is proposing relocation of the cultivation areas currently located within the required SMA setbacks, with specific existing and proposed relocation areas depicted on the Site Plan. A condition of approval is included to require preparation of a Remediation Plan, detailing how the former cultivation areas will be remediated, as well as compliance with the plan.

Timber Conversion

Based on review of historic aerial imagery dating back to 2004, the subject property contains several existing open areas; however, it appears timber conversion has occurred onsite in order to accommodate the existing greenhouses and associated infrastructure. The California Department of Forestry and Fire Protection (CAL FIRE) provided comments in July 2019, where it was noted that "CAL FIRE cannot support the project due to unpermitted conversion activities on the property."

A Timber Conversion Evaluation was prepared by Timberland Resource Consultants in July 2020, in which it was noted that approximately 0.5 acres of unauthorized timberland conversion for cultivation-related purposes occurred on the subject property between 1998 and 2009, 2009 and 2010, 2020 and 2012, and 2014 and 2016, which is below the three-acre conversion exemption maximum. It is further noted in the Report that most slash and woody debris generated from the conversion activities have already been treated, but some scattered slash piles and woody debris remain, including along a Class III watercourse. In addition, the subject property is located within a Zone of Infestation (ZOI) for Sudden Oak Death (SOD), and evidence of oak mortality associated with SOD was observed onsite. Some infected trees have been felled yet remain onsite, and present a fire hazard, requiring slash treatment. The remaining infected trees that have not been properly removed "will likely die and topple over and their removal is recommended to minimize hazard." As the conversion activities conducted on the property do not comply with the standards set forth in the California Forest Practice Act and the California Forest Practice Rules, two (2) recommendations are included in the Report to bring the project into compliance, including treatment of all slash piles and woody debris as soon as possible by burying, chipping and spreading, piling and burning, or removal from the site; and treatment of SOD-infected felled trees. It is noted that any standing trees deemed a hazard may be harvested, but require subsequent treatment for hazard reduction. The project is conditioned to require the applicant implement any remaining corrective actions detailed in the Timber Conversion Evaluation and provide a statement from a registered professional forester (RPF) that all work was completed in compliance with the Report upon completion.

A copy of the Timber Conversion Evaluation was provided to CAL FIRE for review and comment on December 16, 2021. A response was received from CAL FIRE on December 16, 2021, which confirmed that since their original comments provided in July 2019, the applicant has submitted a timberland conversion evaluation report, and, in doing so, has fulfilled the requirements of the County's CMMLUO. A copy of Planning staff's correspondence with CAL FIRE in December 2021 is included in Attachment 4.

Water Resources

Estimated annual water usage is 126,200 gallons (15.17 gal/SF). Water for irrigation is provided by a stream diversion from an unnamed stream, which is a tributary to Blue Slide Creek (a Class I watercourse). A *Right to Divert and Use Water*, issued by the State Water Resources Control Board (SWRCB) in July 2018 (Registration No. H500635, Certificate No. H100127; Attachment 3), includes two (2) stream diversions; however, only one (1) of the water diversions is currently utilized for irrigation. Per the water right, the water appropriated shall not exceed 0.45 acre-feet (146,632.9 gallons) per year and the total storage capacity shall not exceed 0.52 acre-feet (169,442.5 gallons). The total estimated annual water usage (126,200 gallons) is approximately 86.07% of the appropriated amount allowed under the water right. Currently, there is 57,300 gallons of onsite water storage in fourteen (14) HDPE tanks ranging in size

between 1,300 and 5,000 gallons, with two (2) tanks dedicated to domestic use and fire suppression. An additional 30,000 gallons of water storage in six (6) 5,000-gallon tanks is proposed, for a total of 87,300 gallons of onsite water storage. Total water storage (including the amount proposed) is under the maximum allowed under the water right. Conditions of approval require the applicant to continue to comply with the requirements of the Right to Divert and Use Water.

In addition, a Final Streambed Alteration Agreement (Final SAA) was issued by the California Department of Fish and Wildlife (CDFW) in September 2016 (Notification No. 1600-2016-0311-R1; Attachment 3), which includes one (1) encroachment – a water diversion from a Class II stream for domestic use and irrigation. Work for the project includes use and maintenance of the water diversion infrastructure. Per the Final SAA, the amount of water diverted is required to be reduced to a maximum of 150 gallons per day between May 15 to October 15. Based on the amount of water storage available onsite, Planning staff concludes there is sufficient water storage available to meet this requirement. Conditions of approval require the applicant to comply with the requirements established under the Final SAA and to monitor water use from the stream diversion and storage tanks annually to demonstrate there is sufficient water available to meet operational needs.

Several watercourses traverse the subject property. Per review of the County's GIS and as depicted on the Site Plan with respective SMA buffers, Blue Slide Creek (a Class I watercourse) traverses the western and southern portions of the site. In addition, several additional Class II and Class III watercourses are depicted within the northern, western, and eastern portions of the site on the Site Plan, although not depicted on the County's GIS portal. As shown on the Site Plan, portions of three (3) existing greenhouses are shown to be within the SMA buffers, which are proposed for relocation outside of the required setbacks. Conditions of approval require relocation of cannabis-related features outside of the SMA and to a previously disturbed area without the use of heavy machinery.

As previously described, the project also includes Special Permits for development in the Streamside Management Area (SMA) related to continued use and maintenance of two (2) points of diversion for irrigation and future installation, use, and maintenance of hydropower infrastructure. Only one (1) point of diversion is currently utilized; however, the *Right to Divert and Use Water* covers two (2) separate points of diversion. The applicant proposes utilization of the second point of diversion for hydropower, including installation, use, and maintenance of associated infrastructure, at the location of an existing waterfall on an onsite watercourse. The applicant will be required to obtain all necessary permits from applicable regulatory agencies for the proposed onsite hydropower. By adhering to forbearance periods and ensuring the diversion and hydropower infrastructure are designed to minimize impacts to aquatic species, Planning staff supports approval of the Special Permits as impacts to the SMA will be minimized.

A Site Management Plan (SMP; WDID 1_12CC407765) was prepared for the site by Timberland Resource Consultants in April 2019 (Attachment 3), which details existing site conditions, how the property is or will meet the provisions and requirements of the Cannabis General Order, how the applicant is implementing the best practicable treatment or control (BPTC) measures listed in the Cannabis General Order, and remediation efforts needed to bring the operation into compliance. As noted in the SMP, "sections of disturbed area" and cultivation areas associated with Cultivation Areas A and B, in addition to windblown and discarded cultivation-related wastes, legacy refuse, new and used fertilizer containers, cultivation-related poly-pipe associated with an unused surface water diversion, a 500-gallon fuel tank, portable generator and two unused generators, enclosed cargo van, and potting soil, was found to be within a watercourse and riparian setbacks of Blue Slide Creek (Class I) and Class II and Class III watercourses. No irrigation runoff, or evidence of such runoff, was observed at any of the cultivation areas. However, the use of monofilament plastic trellis netting and fencing was observed during the site assessment. The SMP identifies thirty-four (34) treatment recommendations to further protect water quality and bring the project into compliance with required standards, including but not limited to: upgrade existing culverts, installation of rolling dips and rock-lined catchment basin, regrade road surface and rock the access road, provide secondary containment, gather and properly dispose of refuse, relocate cultivated-related infrastructure outside of the required riparian setbacks, and remove unused point of diversion and associated poly-pipe. The project is conditioned to implement all

remaining corrective actions detailed in the SMP to minimize any potential impacts associated with the project and minimize runoff into nearby SMAs.

Biological Resources

Per review of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDDB) in November 2021, the site is mapped within potential habitat for the southern torrent salamander (*Rhyacotriton variegatus*), and the nearest Northern Spotted Owl (NSO) positive sighting and activity center are located approximately 2.14 and 2.55 miles from the nearest cultivation area, respectively. Power to the site is provided by a generator, which, per the Cultivation and Operations Plan (Attachment 3), is estimated to be utilized for 16 hours per day between April and May, and for 14 hours per day from June through September. The applicant has long-term plans to add solar and hydropower. The 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. 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.

A Biological Assessment for the site was prepared by Timberland Resource Consultants, date stamp received June 1, 2019 (on file and confidential). The site assessment was conducted on February 15, 2019. Terrestrial habitats present within the biological assessment are consist of mixed hardwood conifer timberlands, and riparian corridors were observed to be a mixture of upland and riparian vegetation. Riverine habitat within the assessment area includes perennial (Class I), intermittent (Class II), and ephemeral (Class III) watercourses. Per the Report, there are multiple sensitive wildlife resources mapped in the approximate location of the assessment area. In addition, it is noted that "improperly stored cultivation soils were observed [near] potentially hydrologically connected to watercourses during the site visit. Road surfaces on property were saturated and eroding. Improperly stored fuel and large amounts of trash were also observed on-site. These site conditions pose a risk of adversely impacting water quality, aquatic habitat, aquatic wildlife, and terrestrial wildlife through the potential discharge of pollutants including but not limited to sediment, nutrients, fuels, and trash." Further, it is noted that the "cultivation site in its current configuration presents a high risk of nutrient and sediment discharge to Blue Slide Creek." The project area encroaches on the riparian buffer setback of Blue Slide Creek and two ephemeral tributaries (Class III) to Blue Slide Creek. Refuse was observed within the riparian setbacks. It is noted in the Report that the applicant indicated they have been making progress to clear up the property and multiple fifth wheel trailers have been removed from the site since it was acquired in 2015. Several recommendations are included in the Biological Assessment to assure potential impacts on sensitive biological resources are minimized. The project is conditioned to implement all remaining recommendations contained in the Biological Assessment.

Access

Access to the site is via a driveway off Crooked Prairie Road (a private road, which traverses the site) via Blue Slide Creek Road and China Creek Road (private roads) to Briceland-Thorne Road. Briceland Thorn Road is a County-maintained road that has been approved by the Department of Public Works for use by commercial cannabis operations. Road Evaluation Reports for a 1.35-mile segment of China Creek Road from Briceland Thorn Road to Blue Slide Creek Road, a 3.05-mile segment of Blue Slide Creek from China Creek Road to Crooked Prairie Road, and for a 0.5-mile segment of Crooked Prairie Road from Blue Slide Creek Road to the subject property were prepared by the applicant's agent in December 2021 (Attachment 3), which indicate that the roadways meet a Category 4 road equivalent standard and are adequate for the proposed use. The submitted road evaluation included sufficient photographic evidence to verify the roadway condition as described, including roadway width and line of sight. Per referral comments received from the Department of Public Works, Land Use Division, dated July 2019, any existing or proposed non-County maintained road to serve as access for the proposed project that connects to a County-maintained road shall be improved to current standards for a commercial driveway, and, as a result, the access road (China Creek Road Road) shall be paved for a minimum width of 20 feet and a length of 50 feet where it intersects the County road (Briceland Thorn Road). Additionally, all driveways and private road intersections onto the County road shall be

maintained in accordance with County Code Section 341-1 (Sight Visibility Ordinance). Conditions of approval require the applicant to make the required roadway improvements in accordance with Public Works' comments.

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

Planning staff determined 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 204 permits and the total approved acres would be 72.5 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 Zoning Administrator (See Attachment 2 for more information).

Staff recommends that the Zoning Administrator describe the application as a part of the consent agenda, survey the audience to see if any person would like to discuss the application and, if no one requests discussion, make all the required findings based on the evidence in the record and approve the application subject to the recommended conditions.

Alternatives: Several alternatives may be considered: 1) The Zoning Administrator could elect not to hear this item and put the decision making in front of the Planning Commission. Any decision to place this matter before the Planning Commission must be done before opening the public hearing on this project; 2) The Zoning Administrator could elect to add or delete conditions of approval; 3) The Zoning Administrator could deny approval of the requested permits if you are unable to make all of the required findings. Planning Division staff is confident that the required findings can be made based on the submitted evidence and subject to the recommended conditions of approval. Consequently, planning staff does not recommend further consideration of these alternatives.