

Humboldt Heritage MBC
Record Number: PLN-11334-SP
Assessor's Parcel Number: 220-191-035

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 Humboldt Heritage MBC project as recommended by staff subject to the recommended conditions.

Executive Summary: Humboldt Heritage MBC seeks a Special Permit to allow the continued cultivation of 8,200 square feet (SF) of outdoor cannabis utilizing light deprivation techniques with 1,400 SF of ancillary propagation 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 (RA5-20) in the Humboldt County 2017 General Plan Update and zoned Unclassified (U). Outdoor cultivation occurs within the northern portion of the subject parcel in four (4) greenhouses (three 2,400 SF and one 1,000 SF) utilizing light deprivation techniques. Ancillary propagation occurs within a 1,400 SF nursery greenhouse. Two (2) harvests are anticipated annually for the light deprivation greenhouses for a growing season that extends from March through October.

Drying, curing, and bucking occurs onsite in a 1,750 SF barn located southwest of the cultivation area, with all other processing currently occurring offsite at a licensed processing or manufacturing facility. However, onsite processing is anticipated, if the applicant is able to acquire a commercial building permit for the existing onsite barn. A maximum of four (4) people will be on-site during peak operations. Power is provided by Pacific Gas and Electric Company (PG&E). The operation is secured behind a gated access, fenced cultivation facilities, and utilizes securing lighting. Access is limited to employees and restricted access signs are posted at the entry gates. The proposed processing facility will include an alarm system.

A Special Permit is also requested for development within the Streamside Management Area (SMA) related to continued use and maintenance of the water diversion infrastructure.

Onsite Nursery Space

As noted above, the site contains 8,200 SF of existing outdoor cultivation. Ancillary propagation associated with the operation currently occurs in a 1,400 SF nursery greenhouse. Although documentation from a settlement meeting between the applicant and County in April 2018 notes that the Department would allow up to 1,600 SF for an ancillary onsite nursery (see Attachment 3), a nursery space of 10% of the cultivation area (or 820 SF) is the maximum the Planning Commission has allowed for previous projects and to remain consistent with past decisions, a condition of approval is recommended to require the applicant to reduce the amount of nursery space onsite and revise both the Site Plan and Operations Plan to reflect a maximum of 10% of nursery space, or 820 SF.

Timber Conversion

Based on review of historic aerial imagery dating back to 2005, timber conversion has occurred onsite in order to accommodate the existing cultivation area. While the site contained two existing cleared areas in 2005, the northernmost area, comprising the cultivation area, appears to have been expanded between 2014 and 2016. A Less Than Three Acre Conversion Exemption was applied for and accepted by the California Department of Forestry and Fire Protection (CAL FIRE; Exemption #1-16EX-001HUM) in January 2016 (Attachment 3) for 1.5 acres of timber conversion, which coincides with the area

converted based on review of aerial imagery and the conversion map. As the onsite timber conversion occurred in compliance with the issued Less Than Three Acre Conversion Exemption, no restocking is required.

Water Resources

Estimated annual water usage is 222,100 gallons (12.86 gal/SF). Per the Cultivation and Operations Plan Addendum (Attachment 3), 222,100 gallons is diverted between November 1st to March 31st for storage, and then stored water is utilized for irrigation between April 1st and October 31st. An additional 40,000 gallons is diverted from McKee Creek annually (January 1st-December 31st) for domestic use. Existing available water storage is 219,600 gallons in twenty-eight (28) hard-sided tanks ranging in size between 1,500 and 50,000 gallons. An additional 2,500-gallon tank is proposed onsite for fire suppression purposes, as shown on the Site Plan, which would equate to a total of 222,100 gallons of onsite water storage. Based on the applicant's 2019 water use estimates submitted to the State Water Resources Control Board (SWRCB) in February 2020 (Attachment 3), approximately 150,000 gallons of water is utilized annually for cannabis irrigation.

Water for irrigation is provided by a point of diversion from McKee Creek (a Class II stream), which traverses the western portion of the site. McKee Creek is a tributary to the Mattole River. The applicant was issued a Right to Divert and Use Water from the State Water Resources Control Board (SWRCB) Division of Water Rights (Registration H502455, Certificate H100264) in October 2018 (Attachment 3) for the point of diversion. Per the water right, the water appropriated is limited to 0.6197 acre-feet (or 201,961.6 gallons) per year, total storage capacity shall not exceed 0.70 acre-feet (228,096 gallons), and the rate of diversion shall not exceed 42,000 gallons per day. The total amount of available water storage (222,100 gallons, once the proposed 2,500-gallon tank is installed) is under the maximum allowed under the water right. The total estimated annual water usage (150,000 gallons) is approximately 74% of the appropriated amount allowed under the water right.

Additionally, a Final Streambed Alteration Agreement (SAA) was issued by the California Department of Fish and Wildlife (CDFW) in November 2017 (Notification No. 1600-2017-0308-R1; Attachment 3) for four (4) encroachments, including the aforementioned point of diversion, in addition to two (2) additional points of diversion and replacement of an existing culvert. In October 2021, the applicant's agent confirmed that only one point of diversion is utilized onsite for irrigation and domestic use. The Final SAA limits the maximum rate of diversion from McKee Creek to 10 gallons per minute and requires no more than 150 gallons per day be diverted during the low flow season from May 15 to October 15 of any year. The project is conditioned to implement any remaining projects and requirements identified in the Final SAA. Further, conditions of approval require the applicant to monitor water use from the point of diversion and storage tanks annually to demonstrate there is sufficient water available to meet operational needs.

Per review of the County's GIS and the Site Plan, Painter Creek (Class I watercourse) and McKee Creek (Class II watercourse) both traverse the eastern portion of the subject site. Two additional watercourses (a Class II and Class III) are depicted on the Site Plan. A Site Management Plan (SMP; WDID 1B16363CHUM) has been prepared for the site by Green Road Consulting in February 2019 (Attachment 3), which details existing site conditions and remediation efforts needed to comply with the best practical treatment or control (BPTC) measures listed in Attachment A of the Cannabis General Order. As noted in the SMP, the four (4) existing greenhouses are located approximately 100 to 149 feet from a Class II, respectively, thereby meeting required setbacks. A total of nine (9) areas were identified as requiring remediation related to erosion control, water storage bladders, culvert improvements, access road maintenance, and relocation of an existing water tank located within a required riparian setback. Staff understands that the water bladders, as described in the SMP, have been decommissioned and replaced with hard-sided tanks. 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 October 2021, there are no mapped special status species on the subject parcel. Additionally, the nearest positive sighting and NSO activity center are located approximately 0.37 and 0.52 miles from the cultivation area, respectively. Power to the site is provided by Pacific Gas and Electric Company (PG&E). Per the Cultivation and Operations Plan (Attachment 3), supplemental lighting is utilized only in the nursery area.

Comments on the project were received from CDFW in April 2018, in which CDFW expressed concerns regarding significant grading, timber conversion, and expansion after the CMMLUO baseline date of January 1, 2016, and the potential to impact several special status species; and requested clarification regarding how the water use estimates were derived and how the amount of water storage will meet the requirements for seasonal water diversion minimization, requested protocol level surveys to determine NSO presence, and inclusion of several conditions to reduce the project's potential impact on biological resources. In response to CDFW comments, as described previously, the associated timber conversion was determined to have occurred in compliance with the Less Than Three Acre Conversion issued by CAL FIRE in January 2016 and Planning staff review of aerial imagery did not observe any additional expansion after the CMMLUO baseline date. Additionally, as described under "Water Resources", Planning staff determined the project's projected water use and storage would be in compliance with the Right to Divert and Use Water, issued by the SWRCB in October 2018, and there would be sufficient water storage onsite to meet the projected water demand during the forbearance period. Further, due to locations of NSO sightings and observed activity centers, potential presence of NSO is presumed. As such, 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.

Access

Access to the site is via a private driveway off Briceland Thorne Road. Briceland Throne Road is a County-maintained road that has been approved by the Department of Public Works for use by commercial cannabis operations. Per comments received from the Department of Public Works, Land Use Division in September 2017, the project is conditioned to maintain all driveways and private road intersections onto the County road in accordance with the County's Sight Visibility Ordinance (County Code §341-1) and improve the driveway that serves the project to current commercial driveway standards. It is further noted that no fences and gates shall be located within the County right of way and that gates must be set back sufficiently from the road to allow a vehicle to completely full off the road while opening or closing the gate.

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 195 permits and the total approved acres would be 68.488 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.