

Recommended Commission Action

1. Describe the application as part of a public hearing.
2. Request that staff present the staff report.
3. Open the public hearing and receive testimony.
4. Close the public hearing and adopt the Resolution to:

Find that the Commission has considered the Addendum to the adopted Mitigated Negative Declaration (MND) for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) as described by Section 15164 of the State California Environmental Quality Act (CEQA) Guidelines, make all of the required findings for approval of the Conditional Use Permit and approve the Emerald Triangle Medicinal, Inc. Conditional Use Permit and Special Permits (2) as recommended by staff subject to the recommended conditions.

Executive Summary: Emerald Triangle Medicinal, Inc. seeks a Conditional Use Permit to allow the continued operation of an existing 13,000-square-foot (SF) outdoor and 660-SF mixed-light cannabis cultivation operation in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, CMMLUO. The site is designated as Residential Agriculture (RA40) in the Humboldt County 2017 General Plan and zoned Unclassified (U). Cultivation takes place in two main areas, an upper area in the north and a lower area in the south. The southern area includes 6,764 SF of outdoor cultivation with the remainder of cultivation taking place in the northern area. Proposed facilities in the northern area include two 160-SF harvest storage sheds, a two-story 900-SF processing building (1,800 SF total floor space), 1,200-gallon septic tank, ten 5,000-gallon water tanks, four solar panels, and a propane tank. Drying and bucking occurs onsite in a processing tent and all other processing will occur offsite at a licensed processing or manufacturing facility until the proposed processing building is built. Two to five harvests are anticipated annually in the 660-SF of mixed-light greenhouse cultivation for a growing season that extends from February through October. The site has three full-time workers and up to 10 employees may be utilized during brief periods at peak operations; carpooling will reduce road use during peak work seasons.

Power is provided by a Kohler propane generator and two solar panels. There are also "satellite" small solar systems that run the water pump and some fans. Additional low watt (2 to 7 kilowatt) Honda generators are used as necessary and four additional solar panels are planned to allow for more limited generator use. Per the applicant's agent, the applicant will commit to converting to exclusively solar power as a primary power source with generator and or Pacific Gas & Electric (PG&E) as backup as soon as feasible, conditioned on market recovery and or Federal Legalization, but in no case longer than 10 years as a condition of approval (COA #16). The applicant has a quote from Greenwired® Renewable Energy Solutions to address the upgrade which will be enough power to handle the complete project's needs. All generators are housed in an onsite shed with secondary fuel containment.

Toilets are provided in the form of an existing Americans with Disabilities Act-compliant Port-O-San facility that is regularly serviced; this facility will be upgraded, or a new permitted onsite wastewater treatment facility will be constructed. The operation is in a remote and isolated area, hidden from the road by trees and accessible only through a locked gate. An existing 2,500-gallon Fire Safe State Responsibility Areas water tank with fire valve exists on the property and two State Responsibility Area turn-arounds are proposed. All existing and proposed buildings and grading will be permitted as a condition of approval (COA # 6 – 8).

A Special Permit is required to allow setback reduction for diversion maintenance and for restoration activities associated with two diversions in the Streambed Alteration Agreement and to reduce the setback distance to public lands managed by King Range National Conservation Area 420-feet to the south, on the other side of North Fork Bear Creek.

Timber Conversion

It appears historic timber conversion occurred between approximately 2005 and 2009, a period of time that predates the January 1, 2016 CEQA baseline. To mitigate any potential issues related to this historic conversion, evaluation of the site by a registered professional forester is made a condition of approval to assure compliance with the Forest Practices Act (COA #12). Cal Fire submitted comments in 2019 recommending denial of the project if 7 trees were to be removed; this proposal was removed from the project during revision of the Site Plan and project description; no trees are to be removed for cannabis cultivation activities.

Water Resources

Water for irrigation is sourced from a point of diversion on North Fork Bear Creek, a Class I stream, for which the applicant filed an Initial Statement of Water Diversion and Use with the State Water Resources Control Board (SWRCB) in September 2015 and received a Right to Divert and Use Water in 2018 (Registration D032560, Certificate D1115) for three points of diversion (*Windy Ridge, Spring, and North Fork Bear*). Water diversion is limited to 4,500 gallons/day from January 1 to December 31 of each year and 0.45 acre-foot (146,633 gallons) each year by storage from December 1 of each year to March 31 of the succeeding year, not to exceed 0.99 acre-foot (322,592 gallons) per year. Monitoring of all water sources and abiding by the agreement are made a condition of approval (COA #9).

Existing available water storage for irrigation is currently built out to 118,000 gallons and an additional 42,000 gallons of storage is proposed to enable full forbearance from dry season diversion use, for a total storage of 160,000 gallons. Estimated annual water usage is 100,000 gallons (7.3 gallons/SF/year) with peak demand occurring in August at approximately 27,785 gallons. A separate diversion supplies domestic needs, and all water use will be monitored as a condition of approval (COA #9). A Final Lake or Streambed Alteration Agreement (LSAA 1600-2016-0029-R1) with the California Department of Fish and Wildlife (CDFW) (Attachment 3) was also obtained in November 2016 for two water diversion encroachments stating that the maximum instantaneous diversion rate from the water intake shall not exceed 10% of the total flow at any time; the Permittee shall forbear diverting stream flow from May 15 to October 15 of each year; the Permittee shall add sufficient water storage and/or water conservation measures by August 15, 2016; the Permittee shall submit a Water Management Plan by June 15, 2016; and other avoidance and minimization measures.

A WRPP (Attachment 3) was prepared by Compliant Farms in 2017 that details several recommended improvements to point of diversion intake screens, water meters, stream crossings, road drainage, and relocation of generators and associated containment areas necessary to meet the standard conditions of a Tier II discharger under the Regional Water Quality Control Order (WDID: 1B171227CHUM); these improvements are made a condition of approval (COA #10). A Site Management Plan will be prepared for the site as a condition of approval in accordance with updates to the SWRCB Cannabis Policy (COA #11).

Several areas of on the site are described as in need of restoration as detailed in the On-Site Relocation Project Proposal (Attachment 3) and the Water Resource Protection Plan (WRPP) prepared by Compliant Farms in 2018 and 2017, respectively. The relocation receiving area is within an environmentally superior location at the western portion of the northern cultivation area (Area A in the Cultivation Area Verification) and the area to be retired and remediated is in the western portion of the southern cultivation area on an area of historic landslides. In addition, the applicant shall prepare a Restoration Monitoring Plan documenting the results of retirement and restoration and ongoing monitoring of all areas of cultivation and associated access roads that were decommissioned and restored as a condition of approval (COA #14).

Humboldt County's WebGIS shows one mapped stream, North Fork Bear Creek, traversing the property near the southern parcel line along with its associated Streamside Management Area (SMA) buffers. The site plan shows that an unnamed Class II stream runs the length of the eastern parcel line and intersects with North Fork Bear Creek. Two additional Class III streams are also shown on the site plan. As mentioned

above, a Special Permit is required to allow setback reduction for diversion maintenance and for restoration activities associated with two diversions in the Streambed Alteration Agreement and to reduce the setback distance to public lands managed by King Range National Conservation Area 420-feet to the south, on the other side of North Fork Bear Creek.

Biological Resources

A biological survey has not been completed for the parcel. An Initial Biological Resource Assessment consisting of a California Natural Diversity Database (CNDDDB) search was included in the WRPP. The CNDDDB search found that there are potential sensitive species onsite, including the Pacific tailed frog (*Ascaphus truei*), known from the upper reaches of North Fork Bear Creek in the southeast corner of the subject parcel, approximately 466 feet from the southern cultivation area, and Townsend's big-eared bat (*Corynorhinus townsendii*) known from an area approximately 2,100 feet southeast of the southern cultivation area. The Initial Biological Resource Assessment in the WRPP includes avoidance and minimization measures which have been made conditions of approval. No work is planned in or near the North Fork Bear Creek watercourse or associated SMA buffer.

According to CDFW the project also the potential to affect other sensitive fish and wildlife resources. There are four northern spotted owl (*Strix occidentalis caurina*; NSO) activity centers within 1 mile of the project site and lands surrounding the site are heavily forested; thus, there is high potential for NSO habitat. The nearest NSO activity centers are approximately 0.87 mile south of the southern cultivation site and 1.9 miles northwest of the northern cultivation site according to CNDDDB. The proposed project is to continue use of existing developed sites, retirement of cultivation at the lower site, and the potential indirect impacts are mitigated through implementation of best management practices, the SMP required by the SWRCB and Final LSAA with CDFW. Power is provided by a Kohler propane generator and the small Honda generators are utilized as necessary until solar power is fully established. The propane generator is housed in a shed to protect it from the elements and to provide sound dampening. The project is conditioned to ensure that the combination of background, generator, and greenhouse fan or other operational equipment noise meets the noise level threshold. Conformance will be evaluated using current auditory disturbance guidance prepared by the United States Fish and Wildlife Service.

Additional conditions of approval include but are not limited to, ensuring any supplemental lighting associated with mixed-light cultivation is fully contained with black out tarps and have all outside lighting on timers or motion sensors to reduce light exposure to wildlife and their potential habitat, and avoid heavy equipment operations during the NSO critical period (February 1–July 31) or perform protocol-level surveys prior to initiating that work. Additionally, based on comments received from CDFW on October 30, 2019, the project is conditioned meet the reporting requirements measures to protect fish and wildlife resources of the issued Final LSAA. Furthermore, the project is conditioned to adhere to Dark Sky Association standards for greenhouse lighting and security lighting, 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 affect NSO or other sensitive species.

Tribal Cultural Resources Coordination

The project was referred to the Northwest Information Center, Bear River Band of the Rohnerville Rancheria, and Intertribal Sinkyone Wilderness Council in April 2019. A Cultural Resources Investigation was not prepared for the project. The Tribal Historic Preservation Officer Assistant from the Bear River Band of the Rohnerville Rancheria in an email dated July 15, 2019 requested that the Inadvertent Discoveries Protocol be included ensure no cultural resources will be affected by the project. Ongoing conditions of approval are incorporated regarding the Inadvertent Discoveries Protocol to protect cultural resources.

Access

Access to the site is via Windy Ridge Lane off Wilder Ridge Road. Windy Ridge Lane is a privately maintained roadway. A Road Evaluation report for Windy Ridge Lane was prepared by A.M. Baird Engineers (Attachment 3), which states that the entire road is developed to the equivalent of a category 4 road.

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 MND that was adopted for the CMMLUO and has prepared an addendum to this document for consideration by the Planning Commission (See Attachment 2 for more information).

RECOMMENDATION: 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 the required findings for approval of the Conditional Use Permit and Special Permits.

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 2 months later to give staff the time to complete further environmental review.