

Dustin Silva

Record Number: PLN-13264-CUP

Assessor's Parcel Numbers: 216-142-006, 216-143-005, 216-143-010, 216-144-008 (one legal parcel)

Recommended 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 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 Special Permit and adopt the Resolution approving the Dustin Silva Conditional Use Permit and Special Permit as recommended by staff subject to the recommended conditions.

Executive Summary: Dustin Silva seeks a Conditional Use Permit for 11,950 square feet (SF) of existing cannabis cultivation consisting of outdoor cultivation in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, CMMLUO. Mixed-light cultivation, allowed under the applicant's interim permit, is no longer proposed by this project. The site is designated as Agricultural Grazing (AG) in the Humboldt County 2017 General Plan Update and zoned Agricultural Exclusive (AE) and Special Building Site B-5(160). The cannabis cultivation occurs on two naturally flat locations on parcels APN 216-142-006 (80 acres) and 216-143-010 (38 acres). Parcel 216-144-008 (43 acres) is mostly forested and contains no cultivation-related activities, whereas parcel 216-143-005 (76 acres) contains ranch access roads leading from Dyerville Loop Road to the two cultivation areas. These parcels are one legal parcel as determined under case number CC-01-07, effective March 22, 2019. A legal easement detailed on the 2018 Grant Deed allows the applicant to access water on a fifth parcel not owned by the applicant (APN 216-142-014). Ancillary nursery cultivation shall be limited to 10% of the cultivation amount (1,200 SF) as a condition of approval (**COA #A6**). Two annual harvests are expected from greenhouses for a growing season that extends from April through October.

The property is developed with the following: a single standalone cabin (residence), a three-story shop building utilized as a residence on the top two floors and a garage/drying area on the lower floor, and an additional single-story residence and various outbuildings related to agricultural storage and production. All necessary building permits will be obtained from the Humboldt County Building Department for all existing and proposed structures and supporting infrastructure as a condition of approval (**COA #A7-A8**). Drying of harvested cannabis occurs on the ground floor of the existing shop building. The drying room is equipped with ventilation fans and dehumidifiers. The drying process takes approximately 1 week. Processing will be performed offsite at a third-party permitted processing facility. The lead cultivator runs the farm with help from his family and up to four seasonal employees. There is an existing bathroom located within a residence onsite. A septic investigation study is proposed, and if required the septic system(s) will be updated and potentially relocated according to the results of the investigation as a condition of approval and in accordance with comments received from the Division of Environmental Health (**COA #A9**). A locked entry gate is located on the driveway off Dyerville Loop Road. The entry gate remains locked at all times and access to the cultivation area is limited exclusively to employees.

Power for artificial string lights in the nursery and drying fans is currently provided by a 10-kilowatt generator. The applicant intends to develop solar power infrastructure to operate artificial lights, drying building and irrigation pump systems, and that required for domestic needs, within 3 years of permit approval (i.e., April 7, 2025) as a condition of approval (**COA #A10**). Following installation of the solar system, the use of generators will be limited to emergencies. The generator and fuels are in a secondary containment trough and protected from the elements in a shipping container with noise attenuation measures.

The property is currently part of the California Land Conservation Act of 1965, also known as the Williamson Act, which is a program for landowners to benefit from tax incentives in order to maintain agricultural activities on their project. As such, the project site has operated as a ranch for many decades and is currently utilized for ranching and livestock production in addition to cannabis operations. For instance, the rain catchment stock pond is primarily used for livestock. The project, including cannabis cultivation and all associated cannabis improvements on this and the adjacent property operated by the same applicant, is below the two-acre threshold approved by the Williamson Act Committee as not requiring specific review by the Committee. The cultivation proposed on this parcel is less than 0.3% of the total size of the legal parcel meaning that nearly the entirety of the parcel remains available for the grazing use.

Water Resources

Water for cannabis cultivation, fire suppression, and domestic use is provided by two existing surface water diversions and an existing 50-year-old 487,500-gallon stock pond filled by rainwater and seasonal spring flows. The stock pond provides approximately 50,000 gallons of the annual water demands of 140,000 gallons (11.7 gallons/SF/year). The additional 90,000 gallons of irrigation water demands are met by stored water within two bladders (50,000 and 20,000 gallons) and a total of 23,000 gallons of hard tank storage (nine tanks total). Collectively, the pond, bladders, and tanks allow for forbearance of all diversions during the dry season. Water from two points of diversion (POD) is pumped and gravity fed to storage tanks and bladders. Water from the pond is pumped and fed directly to cultivation areas.

The diverter has obtained a Right to Divert and Use Water from the State Water Resources Control Board (SWRCB), which allows the appropriation and diversion to storage of 0.989 acre-feet (322,267 gallons) annually, under Registration: H505001, Certificate: H10040 (**Attachment 3**). Per the Water Right, the rate of diversion to storage shall not exceed 42,000 gallons per day or the diversion rate specified in the current version of SWRCB's Cannabis Policy, whichever is more restrictive, and abiding by the Water Right is made a condition of approval (**COA #A11**). Water from the stock pond is pumped and fed to the gardens. The spring POD-1 on parcel APN 216-143-010 is gravity fed to water bladders and pumped to hard tank storage near the cultivation site on this parcel. The stream diversion POD-2 is from Steelhead Creek on parcel APN 216-142-014 owned by the neighbor to the east for which an access agreement is codified in the Grant Deed for the applicant's parcels. All sources of irrigation and domestic water use will be monitored as a condition of approval (**COA #A12**). A Special Permit is needed for ongoing maintenance of the diversions.

Dustin Silva is enrolled as a Tier 1, Low Risk discharger under SWRCB General Order WQ 2019-0001-DWQ General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Dischargers of Waste Associated with Cannabis Cultivation Activities (WDID 1_12CC407603). A Site Management Plan (SMP; **Attachment 3**) was developed for the property in February 2019 by NorthPoint Consulting Group, Inc. The SMP includes applicable best practicable treatment or control measures from Attachment A of the SWRCB Order, which will improve site drainage, reduce sedimentation, and control erosion. No road remediation or upgrades were deemed necessary and several stream crossings on the legacy ranch roads were noted across the four contiguous parcels. The SMP-recommended measures are made a condition of approval (**COA #A13**). The SMP showed no evidence of surface runoff associated with the existing cultivation areas entering nearby drainages. All existing and proposed cultivation areas are currently at least 50 feet from Class III drainages and 100 feet from Class II drainages, outside of the streamside management area buffers. The project site contains several small tributary creeks flowing east to Steelhead Creek, which itself is a tributary to the Eel River, and nine surface water crossings (STX) were identified as part of NorthPoint's field investigation on the project site (STX 1-9), consisting of both culverted crossings and fill crossings on seasonal access roads. The improvements noted in the SMP are made conditions of approval (**COA #A13**).

A Notification of Lake or Streambed Alteration Agreement (LSAA) was obtained with the California Department of Fish and Wildlife (CDFW) to permit the use and maintenance of the two PODs, replacement or maintenance of the nine STXs, and to notify CDFW of the proposed construction of the

stock pond spillway. LSAA No.: 1600-2019-0171-R1 was issued on November 21, 2019 providing permission to perform the work (**Attachment 3**). The LSAA states that diversion for cannabis use is authorized from November 1 to March 31 of each water year, while diversion for domestic use is authorized from January 1 to December 31. Abiding by the conditions of the LSAA, including limiting diversion rates on POD-1 and POD-2 to 3 gallons per minute, are an ongoing condition of approval (**COA #B17**). The project site is in the Middle Main Eel Planning Watershed, which under Resolution 18-43 is limited to 360 permits and 125 acres of cultivation. With the approval of this project, the total number of approved permits in this planning watershed would be 87, and the total approved acres of cultivation would be 41.95.

Biological Resources

There are no mapped sensitive species on the parcel and no northern spotted owl (NSO) activity centers within 5 miles of the two cultivation areas. However, lands surrounding the site are forested and could provide NSO and wildlife habitat. No special-status species have been mapped on the project parcels in the California Natural Diversity Database, although special-status amphibians and fish species could be present in Steelhead Creek. To protect aquatic resources associated with the two PODs used for irrigation sources, the final LSAA issued by CDFW requires avoidance and minimization measures to protect aquatic resources and water quality (**Attachment 3**). Addendum 10 of the LSAA also requires the catchment pond to be drained down annually during the winter to discourage and disrupt the lifecycle of the bullfrog. Draining down the pond is also required to eliminate the potential of overtopping and subsequent erosion at the outfall.

The project has been conditioned to ensure supplemental string lighting in cultivation nursery greenhouse(s) is fully contained with blackout 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 (March 15–July 31) or perform protocol-level surveys prior to initiating that work (**COA #A14**). Surrounding grazed grasslands could be classified as Sensitive Natural Communities; however, no grading is proposed. Per the Operations Plan, during the growing season, light spillage shall be prevented by use of blackout tarps, which will be installed and securely fastened in place 1 hour prior to dusk and retained in place 1 hour after dawn to prevent light spillage from occurring. 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.

Since power is partially provided by onsite generators until the transition to solar power can be made, the applicant will need to meet the performance standards for noise set by Department Policy Statement No. 16-005 clarifying CMMLUO Section 55.4.11(o), which requires noise levels be at or below 50 decibels at 100 feet or edge of habitat, whichever is closer. As a result, 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. Conformance will be evaluated using current auditory disturbance guidance prepared by the United States Fish and Wildlife Service.

Tribal Cultural Resource Coordination

There are known tribal cultural resources on the project site. The project was referred to the Northwest Information Center (NWIC) and the Bear River Band of the Rohnerville Rancheria in 2019. The NWIC responded that their office has a record of previous cultural resources on a small portion of the project area and that the project area has the possibility of containing unrecorded archaeological site(s), and a study is recommended prior to commencement of project activities. The Tribal Historic Preservation Officer of the Bear River Band of the Rohnerville Rancheria also requested a cultural resource survey. William Rich and Associates prepared a Cultural Resources Investigation in November 2021. Correspondence was also conducted with the Native American Heritage Commission and tribal representatives, and a field survey was performed over the project area, encompassing 47 acres, on May 31, 2021. Field conditions and soil visibility were excellent, as the cultivation areas are generally

situated on open, grassy, graded terraces surrounded by generally steep, east-facing slopes, which are moderately densely forested with Douglas fir, tanoak, madrone, oak and other tree species.

The field survey resulted in the identification of a scatter of ancestral Native American artifacts (debitage) at one confidential location accessed via an all-terrain vehicle (ATV) trail. It is recommended that the archaeological site identified be treated as an historical resource and presumed eligible to the California Register of Historical Resources until further research can be performed to confirm or refute the presence of a subsurface deposit. Recommendations to avoid grading and other ground-disturbing activities at the identified site, while continuing use of the existing ATV access road and location for water tank storage, are provided in this report and made a condition of approval (**COA #15**).

If the recommendations in this report are adhered to, this author believes that cannabis cultivation, as described under this proposed permit, will not cause a substantial adverse change in the significance of the identified archaeological site. If cultivation methods or other conditions change, additional archaeological investigation and tribal consultation would become necessary. No further archaeological studies were recommended for permit approval, as it is currently proposed. Although this report suggests that it would be unlikely to encounter significant buried archaeological materials at this location during implementation of cannabis cultivation, it does provide guidance in the event archaeological materials are unearthed during project activities. Ongoing conditions of approval are incorporated regarding the Inadvertent Discoveries Protocol to protect cultural resources and tribal cultural resources.

Access

The project is in Humboldt County in the Garberville area, on the east side of Dyerville Loop Road, approximately 1.4 miles north from the intersection of Ross Road and Dyerville Loop Road, then approximately 0.6 mile east on a private road, on the property known to be in the west half of the southwest quarter of Section 01, the east half of the east half of Section 02, and the northeast quarter of the northeast quarter of Section 11, Township 04 South, Range 04 East. A Road Evaluation Report with photo-documentation was prepared by the applicant and NorthPoint Consulting Group for the 1.6-mile private road, which indicates that the road is developed to the equivalent of a road category of 4. The Department of Public Works conditionally approved the project with recommendations that have been made a condition of approval (**COA #16**), including to relocate any fences outside of the county right-of-way, and to pave the access road curtain where it intersects a County Road (Dyerville Loop 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 of the required findings for approval of the Conditional Use Permit.

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.