

David Thomas

Record Number: PLN-12196-CUP

Assessor's Parcel Numbers: 221-201-022 and 221-171-042

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 Commission has considered the Addendum to the adopted Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance (CCMLUO) as described by Section §15164 of the State CEQA Guidelines, make all of the required findings for approval of the Conditional Use Permit and Special Permit and adopt the Resolution approving the David Thomas project as recommended by staff subject to the recommended conditions.

Executive Summary: David Thomas seeks a Conditional Use Permit to allow the continued cultivation of 13,350 square feet (SF) of outdoor cannabis, including 1,200 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 (RA40) in the Humboldt County 2017 General Plan Update and zoned Forestry Recreation with 40-acre Minimum Special Building combining zone (FR-B-5(40)). The project site is comprised of two Assessor's Parcel Numbers (APNs) which together are one legal parcel (APNs 221-201-022 and 221-171-042). The proposed project also includes a Special Permit for development within the Streamside Management Area for continued use and maintenance of the point of diversion located on an adjacent property (APN 221-171-044). Access to the site is from a driveway off Council Madrone Road, over APN 221-171-042.

Cultivation currently takes place in the northern portion of the southern property (APN 221-201-022) in six (6) greenhouses utilizing light deprivation techniques, ranging in size from 1,750 to 3,000 SF (12,150 SF total). Ancillary propagation occurs in a 1,200 SF greenhouse. Two (2) harvests are anticipated annually for a growing season that extends from April through October. Drying and processing occurs onsite within three (3) separate structures totaling 530 SF, located near the cultivation area. Up to three (3) may be onsite during peak operations. Power is provided by Pacific Gas and Electric Company (PG&E), with a portable generator utilized for back-up. The operation is secured behind locking metal gates at access roads and the site is normally occupied by the applicant/owner.

Cultivation Area Verification and Nursery Space

As previously discussed, the applicant is requesting 13,350 SF of cultivation, which includes 1,200 SF of ancillary propagation. Based on the County Cultivation Area Verification (CAV) performed in March 2018, 11,842 SF was verified to be in existence prior to the CMMLUO baseline date of January 1, 2016. A *Pre-Existing Investigation for the Thomas Commercial Cannabis Cultivation, Humboldt County, California* (Pre-Existing Investigation) was performed in October 2019 by Arsenault and Associates (Attachment 3), in which the pre-existing cultivation on the southern project parcel (APN 221-201-022), within the western portion of the subject property, was determined to date to 2012 and comprise 2,884 SF. As described in the Cultivation and Operations Plan (Attachment 3), this area (identified as Area G on the County's Cultivation Area Verification) was noted to be 1,825 SF in size. Accounting for this additional area verified by Arsenault and Associates, the site had a total of 12,901 SF of existing cultivation. The amount of cultivation requested under this permit (13,350 SF) is more than the pre-existing cultivation amounts included under the County's CAV and cultivation amount verified by Arsenault and Associates. Although cultivation occurs on slopes less than 15% and the parcel is more than 5 acres in size, there are no prime agricultural soils onsite, a diversionary water source is utilized, and the subject site is not zoned RA, U, FP, DF, AG, or AE, and, as a result, new cultivation cannot be considered on the subject area and the total cultivation area (including the nursery space) is limited to 11,842 SF. As a result, a recommended condition of approval is included to reduce the total square footage to a maximum of 11,842 SF of cultivation, which includes the existing 1,200 SF ancillary propagation space onsite.

Prior Onsite Relocation and Remediation

As depicted on an older version of the Site Plan (date stamp received 6/5/2020 and enclosed with the project maps), an existing full-sun outdoor cultivation area (SF illegible), located immediately east of three (3) existing greenhouses was originally proposed to be relocated into two (2) new greenhouses (25'x82' SF each, totaling 4,100 SF) along the site's eastern boundary, south and east of existing greenhouses, within an existing open area. However, per the 2021 Site Plan, only one (1) additional greenhouse was installed that was 3,000 SF in size and located adjacent to three (3) existing greenhouses in an existing open area. Although the relocation involved a change from full-sun outdoor to outdoor utilizing light deprivation techniques in a greenhouses, Planning staff is supportive of the reorganization, as it will not result in an intensification of the use.

In addition, the site's Water Resource Protection Plan (WRPP), prepared by Timberland Resource Consultants in September 2016 (Attachment 3, detailed further below under the "Water Resources" section), an existing cultivation area was observed within the southern portion of the site, near onsite watercourses, which was proposed for removal. As shown on the older Site Plan, this southern area was 2,884 SF in size and has been decommissioned. As described further below, the WRPP identifies sites requiring remediation, which includes but is not limited to removal of pots and cultivation-related spoils from the decommissioned cultivation area. As a condition of approval, the applicant will be required to implement all remaining corrective actions detailed in the WRPP.

Water Resources

Estimated annual water usage is 120,360 gallons (9.33 gal/SF) with peak demand occurring in August at approximately 22,660 gallons, per the table below.

Table 1. Estimated Average Monthly Water Usage

Month	Total Gal.
<i>March</i>	<i>4,500</i>
<i>April</i>	<i>9,450</i>
<i>May</i>	<i>12,640</i>
<i>June</i>	<i>19,000</i>
<i>July</i>	<i>21,640</i>
<i>August</i>	<i>22,660</i>
<i>September</i>	<i>14,445</i>
<i>October</i>	<i>11,265</i>
<i>November</i>	<i>4,760</i>

TOTAL: 120,360 gallons

Water for irrigation is currently provided by a point of diversion from the Mattole River on an adjacent parcel (APN 221-171-044); however, a 292,000-gallon rainwater catchment pond is proposed on the southern project parcel (APN 221-201-022) in the northwestern portion of the subject parcel. According to the Humboldt County WebGIS, slopes in this area are less than 15% and are mapped with moderate instability. Planning staffs supports development of the off-stream pond to reduce reliance on the surface water diversion from the Mattole River. Conditions of approval require the applicant to obtain a grading permit prior to construction of the pond and notify the California Department of Fish and Wildlife (CDFW). A Final Streamed Alteration Agreement (FSAA) for the pond outfall improvements must be obtained prior to construction or a letter from CDFW staff indicating a FSAA is not required. In addition, per the Site Plan, there is another point of diversion from an unnamed stream on the southern portion of the southern parcel (APN 221-201-022) that is used only for domestic use. The applicant also seeks a Special Permit for development within the Streamside Management Area for continued use and maintenance of the point of diversion from the Mattole River for irrigation.

A *Right to Divert and Use Water* (Registration ID H500654; Certificate No. H100075) has been issued for the two (2) points of diversion by the State Water Resources Control Board (SWRCB) in June 2019 (Attachment 3). Per the water right, 0.34 acre-feet (or 110,789 gallons) of water may be diverted to storage annually from January 1st to December 31st. Storage capacity cannot exceed 0.46 acre-feet (149,891 gallons). Existing available water storage is 130,000 gallons in a series of hard-sided tanks (20 5,000-gallon and 10 3,000-gallon tanks); water storage on-site is consistent with the storage amounts authorized by the SWRCB. With the proposed rainwater catchment pond, there will be a total of 422,000 gallons of onsite water storage. This volume of storage is allowable as described the appropriative right. Once the proposed rainwater catchment pond is constructed onsite, it is anticipated there would be sufficient water available from rainwater to serve the project and the point of diversion would only be utilized as needed. Conditions of approval require the applicant to monitor water use from the point of diversion, rainwater catchment pond (once developed), and water tanks annually to demonstrate there is sufficient water available to meet operational needs.

A FSAA with the California Department of Fish and Wildlife (CDFW) was issued (Notification No. 1600-2017-0334-R1) in May 2018 for five (5) encroachments on the northern and southern project parcels. The encroachments include three (3) point of diversions (one for domestic use), removal and decommissioning of an existing stream crossing (failing 12-inch culvert) on an old ATV trail that is utilized as a foot path, and replacement of an existing wooden bridge with an 18-inch diameter by 20-foot-long culvert. As noted in the FSAA, water diverted directly from the main stem of the Mattole River was being done through use of an appropriately screened and placed submersible pump; however, this was projected to be discontinued in 2018, when water diversion was proposed to occur using a shallow (approximately 8 to 10-inch diameter and 30-foot-deep) well installed on the Mattole River floodplain. The applicant has indicated that work associated with the FSAA has been completed. By adhering to the terms and conditions of the Right to Use and Divert Water, which limits the amount of water that can be diverted and the and the FSAA, which limits the diversion amount and duration in addition to the specifying the use of intake structures that will not impact aquatic species, Planning staff determined that impacts to the watershed are minimized allowing the use of point diversion pursuant to a Special Permit.

A Water Resource Protection Plan (WRPP; WDID 1B16612CHUM) was prepared for the site by Timberland Resource Consultants in September 2016 (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 detailed on the WRPP map, two (2) Class II watercourses and a Class III watercourse traverse the southern portion of the site (APN 221-201-022). An additional Class III watercourse is located within the eastern and central portions of the northern project parcel (APN 221-171-042). As noted in the WRPP, the access road is rocky and well-maintained. In addition, "developed areas and cultivation areas are located along gently sloping ridgetops near roads and an existing house site." At the time of the site assessment, garbage and refuse from the prior owner was in the process of being gathered and removed by the current owners. The WRPP identifies eight (8) treatment recommendations to further protect water quality and bring the project into compliance with required standards, including but not limited to: install, repair, and maintain waterboards along the ATV trail; refrain from utilizing Segment 6 of the ATV trail; remove an existing rusted 12-inch-diameter culvert and abandon the crossing along the ATV trail; replace wooden bridge crossing with an 18-inch-diameter culvert along ATV trail; remove the prior cultivation area and associated materials within 50-feet of a Class II watercourse; relocate holding tanks and gas powered water pump to a stable location outside of required SMA buffers; increase off-stream water storage to such an amount to avoid water diversion for irrigation during the low flow period; and ensure the existing septic system meets applicable standards. The project is conditioned to implement all remaining corrective actions detailed in the WRPP.

Additional conditions of approval require the applicant to submit copies of all documents filed with the State Water Resources Control Board, including, but not limited to, a Site Management Plan.

Furthermore, conditions require the applicant adhere to and implement the requirements contained in the SWRCB's Cannabis Cultivation Policy, the General Order, the Site Management Plan, and the Notice of Applicability, which will minimize any potential impacts associated with the project and minimize runoff into nearby SMAs.

Biological Resources

There are no mapped sensitive species onsite and the nearest NSO positive observation is located approximately 1.21 miles from the nearest cultivation area, with the nearest NSO activity center located approximately 2.41 miles away. As previously described, power is provided by Pacific Gas and Electric Company (PG&E), with a portable generator utilized for back-up. While the outdoor cultivation areas utilize light deprivation techniques, artificial lighting (string lights) is utilized seasonally (as needed) to support the 1,200 SF onsite propagation area. The applicant will be required to implement noise and light attenuation measures. Conditions of approval also require the applicant to 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 CMLUO performance standards and CDFW guidance and will not negatively impact NSO or other sensitive species.

Access

Access to the site is via a driveway off Council Madrone Road via Wilder Ridge Road to Ettersburg-Honeydew Road to Briceland Thorne Road. Wilder Ridge Road, Ettersburg-Honeydew Road, and Briceland Thorne Road have all been identified as County-maintained roadways that meet (or are equivalent to) Category 4 road standards for cannabis projects. A Road Evaluation Report for an approximately 1-mile segment of Council Madrone Road from Wilder Ridge Road to the subject property was prepared by the applicant in October 2017 (Attachment 3), which indicates that the roadway meets a Category 4 road equivalent standard and is adequate for the proposed use. Per referral comments received from the Department of Public Works, Land Use Division, dated October 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 (Council Madrone Road) shall be paved for a minimum width of 20 feet and a length of 50 feet where it intersects the County road (Wilder Ridge 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 207 permits and the total approved acres would be 73.22 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 and Special 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 two months later to give staff the time to complete further environmental review.