

**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 (CMMLUO) as described by Section §15164 of the State CEQA Guidelines, make all of the required findings for approval of the Conditional Use Permit and adopt the Resolution approving the Whipsawasons, LLC, project as recommended by staff subject to the recommended conditions.*

**Executive Summary:** Whipsawasons, LLC, seeks a Conditional Use Permit to allow the continued cultivation of 12,000 square feet (SF) of outdoor cannabis contained within sixteen (16) greenhouses and grown utilizing light deprivation and 1,200 SF of proposed ancillary propagation (for a total of 13,200 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). The site is designated as Residential Agriculture (RA40) in the Humboldt County 2017 General Plan Update and zoned Forestry Recreation (FR-B-5(40)). Cultivation takes place in four (4) separate areas: Cultivation Area 1 (northeastern area) contains 2,052 SF of outdoor cultivation grown in four (4) greenhouses; Cultivation Area 2 (southeastern area) contains 5,612 SF of outdoor cultivation grown in four (4) greenhouses; Cultivation Area 3 (northwestern area) contains 2,375 SF of outdoor cultivation grown in five (5) greenhouses; and Cultivation Area 4 (southwestern area) contains 1,710 SF of outdoor cultivation grown in three (3) greenhouses. Two (2) harvests are anticipated annually for a growing season that extends from April through October.

Ancillary propagation is proposed in a separate 1,200 SF greenhouse located north and west of the existing cultivation areas, adjacent to the existing 2,000 SF shop building. As noted in the Cultivation and Operations Plan (Attachment 3), during the winter months, propagation will occur in the shop building. It is further noted that the propagation area within the shop building will not be in operation when the 1,200 SF nursery greenhouse is being utilized.

Drying and bucking occurs onsite within an existing 2,000 SF shop building. Construction of a 600 SF metal building is proposed in the southwestern portion of the subject parcel on the existing lower flat by the residence to replace the current drying and bucking area. Currently, all other processing occurs offsite at a licensed processing or manufacturing facility; however, onsite processing is proposed onsite in the future once construction of the additional building is complete. A maximum of three (3) employees are required for the operation. Power is provided by an onsite solar system with inverter and battery system. An onsite generator is only utilized as a backup and is expected to run for a maximum of several hours a year. The operation is secured behind a locked, gated access and fenced cultivation areas. The cultivation and drying facility areas have low intensity motion sensor lighting designed and located for limited light exposure. The drying/storage facilities will include an alarm system.

**Onsite Cultivation and Nursery Space**

As previously discussed, the applicant is requesting 12,000 SF of outdoor cultivation, in addition to 1,200 SF of ancillary propagation. With the ancillary propagation space included, there will be a total of 13,200 SF of onsite cultivation; however, based on the County's cultivation area verification, only 12,000 SF was in existence prior to the CMMLUO environmental baseline date of January 1, 2016. The proposed propagation space equates to 10% of the cultivation area, which is what Planning staff and the Planning Commission have found allowable in the past. Although the parcel is more than 5 acres in size, cultivation occurs on slopes less than 15%, and a non-diversionary water source is utilized, 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 12,000 SF. As a result, recommended conditions of approval are included to reduce the cultivation areas to a maximum of 10,800 SF of cultivation, to include the proposed nursery space of 1,200 SF, for a total of 12,000 of onsite cultivation (**Conditions of Approval #5 and #6**).

### **Water Resources**

Estimated annual water usage is 137,000 gallons (10.4 gal/SF). Water for irrigation is provided by an existing 500,000-gallon rainwater catchment pond. There is an onsite well located in the north central portion of the property, approximately 300 feet from any watercourse; however, the onsite well is utilized solely for domestic use. The 500,000-gallon rainwater catchment pond is located in the northwest portion of the property and has a capture area of approximately 8,500 SF. The 10-year average rainfall on the site was found to be 63.6 inches and it was determined that the rainwater catchment pond has the potential to collect an average of 337,500 gallons per year. Based on these calculations, the water needs of the project can be met entirely from rainwater catchment. Conditions of approval require the applicant to monitor water use from the pond and water storage tanks annually to demonstrate there is sufficient water available to meet operational needs (**Condition of Approval #17**).

A Final Streambed Alteration Agreement (SAA; Notification No. 1600-2018-0038-R1) was issued by the California Department of Fish and Wildlife (CDFW) on May 20, 2020. Conditions of approval require submittal of the Final SAA to the County and adherence to the terms of the SAA including any required upgrades, maintenance, and monitoring (**Condition of Approval #12**). Per the Cultivation and Operations Plan (Attachment 3), all upgrades required by CDFW in the SAA have been completed.

A Water Resource Protection Plan (WRPP) was prepared for the project by Natural Resources Management Corporation, dated August 14, 2017 (Attachment 3), which describes current site conditions and outlines various improvements and recommendations for the site. It is noted in the Report that the site is historically grassland with an overall slope of 25%, although cultivation areas occur on man-made flats. Four (4) Class III streams were noted to be onsite, and it is further noted that some cultivation sites are located within the required Streamside Management Area (SMA) buffers. The Report states that the primary water quality issues at the site are in regard to the cultivation areas' proximity to surface waters and associated runoff, as well as remnants of the prior landowners' activities (including an old water diversion and unused infrastructure near the well), that need to be cleaned up. A total of twelve (12) recommended corrective actions were detailed in the Report, including but not limited to relocating cultivation outside of the required 50-foot SMA buffer and revegetating the buffer, regrading flats to drain away from creek and road ditch, stabilizing a cutbank slump, removing old water diversion and unused materials, filling in pit toilet, and discontinuing use of two (2) 3,000-gallon tanks until located on stable, flat ground. Conditions of approval require implementation of any remaining corrective actions and recommendations outlined in the WRPP (**Condition of Approval #13**). However, per the Cultivation and Operations Plan (Attachment 3), all corrective measures described in the WRPP have been completed. Conditions of approval require submittal and adherence to a Site Management Plan (SMP) (**Condition of Approval #16**). By adhering to the terms and conditions of the WRPP, SAA, and SMP, impacts to water resources will be minimized.

### **Biological Resources**

Per review of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDDB) in September 2021, there are no mapped sensitive species onsite. The nearest NSO sighting is located approximately 0.59 miles from the nearest cultivation area, while the nearest NSO activity center is located approximately 1.85 miles away. Power at the site is provided by onsite solar, and, per the Cultivation and Operations Plan (Attachment 3), an 8,000 kW generator will be utilized only as a backup. The applicant anticipates the generator to be used "a couple of hours a couple of days a year." The conditions of approval require the applicant to adhere to the performance standards for noise set by Department Policy Statement No. 16-005, to refrain from using synthetic netting, ensure refuse is contained in wildlife proof storage, refrain from using anticoagulant rodenticides to further protect wildlife, and ensure lighting meets International Dark-Sky Association standards and is fully

contained (**Conditions of Approval #18-19 and Ongoing Condition of Approval #1**). 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.

### **Timber Conversion**

A review of historic satellite imagery dating back to 2004 shows that the site is predominately open, with trees located in the northern and southeastern portions of the parcel. It appears that approximately eleven (11) trees were removed during the development of the cultivation areas, and that conversion may have occurred onsite between 2010 and 2012, 2012 and 2014, 2014 and 2016, and 2016 and 2018. The project is conditioned to require the property be evaluated by a Registered Professional Forester (RPF) to determine the amount of timber conversion that occurred prior to and after the CMMLUO baseline date of January 1, 2016, and submit a Timber Conversion Report from a RPF and/or a Less Than Three Acre Conversion Exemption or Timber Conversion Permit from CAL FIRE, as determined necessary by the RPF, as well as any additional measures recommended by the RPF to address previously unpermitted timber conversion. Additionally, the applicant/owner shall be required to re-stock an area onsite equivalent to the amount of area converted after the CMMLUO baseline date at a rate of 3:1. Further, the project is conditioned to require preparation of a Restocking Plan within 90 days of project approval and implement the Restocking Plan within a period of two (2) years, should any timber conversion be determined to have occurred after the CMMLUO baseline date. The Restocking Plan shall include details on the locations and total areas to be restocked, the type, number, and spacing of the plantings, and a monitoring plan for three (3) years which includes performance evaluations, performance standards, and contingency measures should performance standards not be met. The Report shall include monitoring and reporting requiring a minimum of 3 years of monitoring at an 85% success rate and submission of annual monitoring reports at the time of the annual inspection (**Condition of Approval #11**). No additional tree removal is authorized by this permit.

### **Access**

Access to the site is via a driveway off Sunset Ridge Road to Alderpoint Road. Alderpoint Road is a Category 4 County-maintained roadway. A Road Evaluation Report for a 1.9-mile segment of Sunset Ridge Road to Alderpoint Road was prepared for a nearby property located northwest of the site in August 2018 (Attachment 3), which indicates the roadway meets a Category 4 road equivalent standard and is 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. In response to comments received from the Department of Public Works, Land Use Division in July 2018, the project is conditioned to improve the intersection of the access road (Sunset Ridge Road) with Alderpoint Road to commercial standards, specifically by paving Sunset Ridge Road for a minimum width of 20 feet and a length of 50 feet where it intersects the County road (Alderpoint Road) (**Condition of Approval #10**).

Due to the number of pending and approved cannabis projects along Sunset Ridge Road, the conditions of approval also require, within 1 year from the effective date, the applicant shall take steps to form a Road Maintenance Association for the maintenance of Sunset Ridge Road. The necessary steps include sending notices to all road users of the requirement to form a Road Maintenance Association and conducting a meeting with the users of the road, especially those engaged in commercial cannabis activities to discuss formation of the Road Maintenance Association. The applicant shall provide evidence, including notice, meeting minutes, and the decision as to whether a Road Maintenance Association is being formed to show this effort. In the event the applicant is unable to coordinate formation a Road Maintenance Association, the applicant shall pay fair-share cost for maintenance of the road to any road user engaged in maintaining the road (**Condition of Approval #9**).

### **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 majority of the project site is located in the Middle Main Eel Planning Watershed, with the northeastern portion of the site located

within the Lower Eel Planning Watershed. However, the portion of the site where cultivation occurs is within 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 approved permits in this Planning Watershed would be 86 permits and the total approved acres would be 41.95 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 (CUP).

**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.