



# COUNTY OF HUMBOLDT

For the meeting of: 12/1/2022

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File #: 22-1587

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**To:** Planning Commission

**From:** Planning and Building Department

**Agenda Section:** Consent

**SUBJECT:**

**Lower Thomas Road, LLC Conditional Use Permit and Special Permit**

Record Number: PLN-12214-CUP

Assessor's Parcel Number (APN): 219-041-012

Garberville area

Conditional Use Permit (PLN-12214-CUP) for an existing 9,248 square feet (SF) of outdoor cannabis cultivation, contained within 17 greenhouses. Plants are propagated in a nursery (400 SF) and secondary ancillary nursery (250 SF) totaling 650 SF (7% of cultivation area), and a Special Permit to allow the continued use of existing onsite buildings and a portion of the road located within the 100-foot setback of a Class II watercourse. Irrigation water is sourced from a permitted groundwater well (Humboldt County permit number 18/19-0859). Estimated annual irrigation water usage is 144,500 gallons (15.63 gal/SF). At the time of drilling, June 2019, the driller estimated a yield of one gallon per minute (gpm), based on a 4-hour air lift pump test. Due to reliance on a well, the applicant has submitted a "Hydrologic Isolation of Existing Well from Surface Waters" report, prepared by Lindberg Geologic Consulting (David Lindberg), dated October 11, 2022. Water is stored onsite utilizing twenty (20) storage tanks consisting of: 4-3,000 gallon tanks, 8-5,000 gallon tanks, 2-4,700 gallon tanks, 1-1,010 gallon tank, 2-500 gallon tanks, and 3-300 gallon tanks. Total water storage onsite is 64,310 gallons. Drying and trimming occur onsite in two existing sheds totaling 768 SF (384 SF each). Further processing occurs offsite at a licensed third-party facility. A total of three (3) employees will be required for project operations. The primary source of electrical power is a solar array with battery storage, and backup propane generator (Kohler 8.5kW).

**RECOMMENDATION(S):**

That the Planning Commission:

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 part of the Consent Agenda; and
4. Adopt the resolution (Resolution 22-\_\_). (Attachment 1) which does the following:
  - a. Finds that the Planning Commission has considered the Addendum to the Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance that was prepared for the Lower Thomas Road, LLC Conditional Use Permit and Special Permit); and
  - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
  - c. Approves the Lower Thomas Road, LLC Conditional Use Permit and Special Permit subject to the recommended conditions of approval (Attachment 1A)

**DISCUSSION:**

**Project Location:**

The project is located on the east side of Lower Thomas Road, approximately 2.3 miles southeast from the intersection of Thomas Road and Lower Thomas Road, in the Garberville area in southern Humboldt County.

**Access:**

The project is located on the east side of Lower Thomas Road, approximately 2.3 miles southeast from the intersection of Thomas Road and Lower Thomas Road, in the Salmon Creek area in southern Humboldt County. Joel Monschke, PE, of Stillwater Sciences evaluated a 0.3-mile segment of the private community-maintained road accessing the subject parcel and determined the road is not developed to the equivalent of a road category 4 standard. The evaluator determined the road is in generally good condition and of sufficient width to accommodate traffic to and from the single property to which it provides access. The Humboldt County Department of Public Works (DPW) recommended additional conditions of approval pertaining to driveway visibility and road intersections (Conditions 11 and 12).

**Present General Plan Land Use Designation:**

Residential Agriculture (RA), 2017 General Plan; Density: 40 acres per unit; Slope Stability: High Instability (3)

**Present Zoning:**

Forestry Recreation with Special Combining District (FR-B-5[40])

**Environmental Review:**

An Addendum to a previously adopted Mitigated Negative Declaration has been prepared for consideration per §15164 of the State CEQA Guidelines.

**State Appeal:**

Project is NOT appealable to the California Coastal Commission.

**Major concerns:**

No major issues/concerns were identified for this project.

**Executive Summary:** Lower Thomas Road, LLC seeks a Conditional Use Permit (PLN-12214-CUP) for an existing 9,248 square feet (SF) of outdoor cannabis cultivation, contained within 17 greenhouses. Plants are propagated in a nursery (400 SF) and secondary ancillary nursery (250 SF) totaling 650 SF (7% of cultivation area), and a Special Permit to allow the continued use of existing onsite buildings and a portion of the road located within the 100-foot setback of a Class II watercourse.

The applicant intends to continue use of the existing greenhouses measuring: 1 - 13' x 64' (832 SF), 1 - 6.5' x 21' (136.5 SF), 1 - 6.5' x 29' (188.5 SF), 1 - 10' x 25' (250 SF), 4 - 10' x 28' (280 SF each; 1,120 SF total), 1 - 10.5' x 25' (273 SF), 1 - 16' x 28' (448 SF), 4 - 16' x 50' (800 SF each; 3,200 SF total), 1 - 20' x 60' (1,200 SF), and 2 - 16' x 50' (800 SF each; 1,600 total) for a combined amount of 9,248 SF of cultivation.

The site is zoned as Forestry Recreation with Special Combining District (FR-B-5[40]), as defined in the Humboldt County 2017 General Plan Update. Drying and trimming occur onsite in two existing sheds totaling 768 SF (384 SF each). Further processing occurs offsite at a licensed third-party facility. A total of three (3) employees will be required for project operations. The primary source of electrical power is a solar array with

battery storage, and backup propane generator (Kohler 8.5kW).

Water Resources: Irrigation water is sourced from a permitted groundwater well (Humboldt County permit number 18/19-0859. Estimated annual irrigation water usage is 144,500 gallons (15.63 gal/SF). Water is stored onsite utilizing twenty (20) storage tanks consisting of: 4-3,000 gallon tanks, 8-5,000 gallon tanks, 2-4,700 gallon tanks, 1-1,010 gallon tank, 2-500 gallon tanks, and 3-300 gallon tanks. Total water storage onsite is currently 64,310 gallons. According to the well completion report, the well has an estimated yield of 1 gallon per minute. Due to the relatively low yield of the well staff is recommending that the project be conditioned to develop additional water storage to total at least 144,500 gallons on-site and to forbear from the use of the well from June 1st through September 30th of each year (Condition 16). This forbearance period is based primarily on the irrigation schedule in the operations plan which identifies this time period as the primary irrigation period.

Due to reliance on a well, the applicant has submitted a “Hydrologic Isolation of Existing Well from Surface Waters” (Hydrologic) report, prepared by Lindberg Geologic Consulting (David Lindberg), dated October 11, 2022. The Hydrologic report concluded a “low likelihood of the well being hydrologically connected to nearby surface waters in any manner that could affect adjacent springs, wetlands, and or surface waters within the vicinity (1,000-foot radius)”...an area consisting of approximately 72 acres.” The Hydrologic report stated that the well is approximately 180 deep and the wellhead sits at an elevation of approximately 1,060 feet in elevation.

Humboldt County WebGIS shows one perennial tributary of Bogus Creek 855-feet to the southeast. South Fork Salmon is approximately 2,400 feet southwest of the well. At the nearest point, the elevation of the perennial tributary of Bogus creek is approximately 870 feet in elevation. The well bottom elevation is approximately 880 feet in elevation, making the nearest watercourse approximately 10-feet lower in elevation than the total depth of the well.

No wells were identified within 1,000 feet of the existing well based off a search of the Department of Water Resources Database. The aquifer tapped by the subject well is recharged by water infiltrating through the soil and mélange bedrock from upslope source areas both proximal and distal to the well site. Ephemeral streams and other seasonal drainage courses in the vicinity of the well also contribute recharge when they flow during runoff generating storm events. Recharge within the 72 acres enclosed by a circle having a 1,000-foot radius, would be more than 29-acre feet. The well is also not located within a basin subject to the Sustainable Groundwater Management Act, and no Groundwater Sustainability Agency has been established with authority over the area where the permitted well is located.

The Hydrologic report ultimately concludes:

“Based on observations, review of pertinent and available information, and our experience, it our professional opinion that this well has a low potential of having any direct or significant connection to proximal surface waters. First water was reportedly encountered at 51 feet and rose to a static level at 42 feet bgs (below ground surface). This well is sealed through the upper 20 feet of any potential unconfirmed, near-surface aquifers with which it might communicate hydraulically through the borehole. The bentonite-sealed surface casing isolates the well bore from surface and shallow subsurface water infiltration into the deeper water-bearing aquifers.”

Furthermore, the report concludes:

“...the depth of the surface seal, combined with the 12 feet of brown shale, are sufficient to preclude the potential for hydraulic connectivity with surface waters, of which there are none closer than 855 feet in the perennial tributary of Bogus Creek. ...the water source from which this well draws appears to be a confined,

slightly artesian subsurface aquifer not demonstrably connected to any surface waters or unconfined, near-surface aquifer(s). This well appears, in our professional opinion, likely to be hydraulically isolated from nearby wells, surface waters, springs or wetlands.”

A Site Management Plan (SMP) was prepared in June 2021, by Pacific Watershed Associates, in fulfillment of State Water Resources Control Board (SWRCB) General Order WQ 2019-0001-DWQ. The document was prepared to meet the North Coast Regional Regional Water Quality Control Board (NCRWQCB) requirements for Tier 1 discharges of waste resulting from cannabis cultivation (WDID No. 1-12CC419107). The SMP analyzed approximately 0.59 miles of roadway (driveway and access roads 1 through 4) and two (2) stream crossings on the project site. The road segments were concluded to experience very low use currently, and although few to no permanent road drainage structures were in place, no significant surface erosion or sediment delivery to nearby water courses was observed. Stream Crossing 1 (SC-1) has an adequately sized 36-inch culvert; and no additional treatments are recommended at this time. Stream Crossing 2 (SC-2) is primarily washed out although approximately 40 yd<sup>3</sup> of road fill remains; due to the current and relatively unstable condition of this stream crossing, the amount of potential disturbance associated with treating the site, and the low potential for significant erosion and sediment delivery, no treatments are recommended for this crossing.

The SMP includes “Table 1 - Prioritized implementations schedule for Best Practicable Treatment or Controls (BPTC)” which identifies a summary of corrective actions/recommendations throughout the site. Table 1 addresses routine maintenance and on-going monitoring actions to be implemented throughout Cultivation Areas, Roads, Stream Crossings, Fertilizer Storage areas, previously disturbed areas, trash/refuse collection areas. The project is conditioned to comply with the routine maintenance requirements found in Table 1 (Condition 8).

A Lake and Streambed Alteration Agreement (LSAA) has been filed with the California Department of Fish and Wildlife (CDFW) to address all work to be done within the waterways (Notification No. 1600-2018-0284-R1). The LSAA addresses four (4) project encroachments, including two (2) points of diversion from unnamed tributaries of Salmon Creek (domestic water diversion, micro-hydro power generation, and irrigation), and two (2) encroachments to a poorly installed culvert and to decommission another stream crossing. Encroachment related to the point of diversion include use and maintenance of the water diversion infrastructure. Other encroachment work will include excavation, removal of the failing culverts, replacement of new culverts, backfilling and compaction of fill. The requirements and recommendations of the LSAA were incorporated into the Site Management Plan.

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 South Fork Eel Planning Watershed, which under Resolution 18-43 is limited to 730 permits and 251 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 299 permits and the total approved acres would be 91.27 acres of cultivation.

#### Biological Resources:

A list of potential special status species was generated in January 2022 using the following information systems: California Natural Diversity Database (CDFW 2022), Biogeographic Information and Observation System (BIOS), Northern Spotted Owl Viewer (CDFW 2022), and US Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC). Two (2) special status species appear within one (1) mile of

the project area: the foothill yellow-legged frog (approximately 2,400 feet away) and the Humboldt County milk-vetch (approximately 4,800 feet away), both state-listed endangered species. Project activities are not expected to produce adverse or cumulative effects to any special status species or habitat, due to the small size of the project area and the type of proposed activities. Therefore, impacts to biological resources with project are considered low and unlikely, with implementation of the mitigation measures identified in the CMMLUO Mitigated Negative Declaration (MND) adopted on January 26, 2016.

California Environmental Quality Act (CEQA):

Environmental review for this project was conducted in January 2022 by the County. Based on the results of that analysis, staff finds that all aspects of the project have been considered in the Mitigated Negative Declaration (MND) adopted for the Commercial Medical Marijuana Land Use Ordinance on January 26, 2016. Accordingly, staff has prepared an addendum to this document for consideration by the Planning Commission. See Attachment 2 for more information.

Timberland Conversion Evaluation Report:

A Timberland Conversion Evaluation Report (TCER) was prepared by Timberland Resource Consultants to address areas of timberland on the subject parcel which were improperly converted to cultivation area (June 4, 2018). A total of 0.57 acre of land was improperly converted at two (2) cultivation sites (0.5 acre at Cultivation Area 1 and 0.07 acre at Cultivation Area 2). At Cultivation Area 1, the applicant shall treat two (2) deposits of slash and woody debris per the specifications of the TCER and retain two (2) onsite old-growth Douglas fir trees (Condition 13).

Tribal Cultural Resource Coordination:

A records search for known cultural resources was requested from the Northwest Information Center (NWIC). The records search revealed that no previous cultural resources field studies have been recorded for the subject parcel. The referral from NWIC recommended having a qualified professional assess the project area to determine if archaeological and/or cultural resources are present. The Bear River Band of the Rohnerville Rancheria was contacted and Erika Cooper, Tribal Historic Preservation Officer, recommended the project implement the standard inadvertent discovery protocol (Condition 9).

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies and all responding agencies have either responded with no comment or recommended approval or conditional approval. (Attachment 5)

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could elect to not approve the project.
2. 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.
3. 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 which case, the Commission should continue the item to a future date at least two months later to provide staff

adequate time to complete further environmental review.

ATTACHMENTS:

1. Resolution
  - A. Conditions of Approval
  - B. Cultivation Operations Plan
  - C. Site Plan
2. Location Maps
  - A. Watershed Map
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
  - A. Site Management Plan
  - B. David Lindberg Final Well Report
  - C. Timber Conversion Report
  - D. Noise Control System
  - E. Road Evaluation Report
5. Referral Agency Comments and Recommendations

Owner

Lower Thomas Road, LLC  
3556 Lower Thomas Road  
Garberville, CA 95542

Applicant

LTR Realty, LLC  
C/O Micah Anderson  
5666 La Jolla Blvd #270  
La Jolla, CA 92037

Agent

The Elevated Solutions, LLC  
C/O Lesley Doyle  
3943 Walnut Drive  
Eureka, CA 95503

Please contact David J. R. Mack, AICP, Senior Project Manager/Planner (Harris & Associates) at 831-320-0413 or by email at [david.mack@weareharris.com](mailto:david.mack@weareharris.com) <<mailto:david.mack@weareharris.com>>, if you have any questions about the scheduled public hearing item.