



COUNTY OF HUMBOLDT

For the meeting of: 12/5/2024

File #: 24-1648

To: Planning Commission

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

CannaDreams, LLC - Special Permits
Assessor Parcel Numbers (APN) 108-026-006
Record No.: PLN-12088-SP
Ettersburg area

A Special Permit for the continued operation of an existing cannabis cultivation site consisting of 9,500 square feet of outdoor cannabis cultivation in greenhouses and 950 square feet of ancillary nursery space, a Special Permit to reduce the setback to BLM public land, and a Special Permit for reduction of the Streamside Management Area setback to allow for a hydroelectric facility on the onsite stream and for the point of diversion. Irrigation water is sourced from a point of diversion and is subject to forbearance. There will be 171,000 gallons of water storage on the parcel designated for cannabis irrigation and 6,500 gallons reserved for fire suppression. The applicant's estimated annual water use is approximately 88,700 gallons. Drying will occur onsite and other processing will occur offsite at a licensed third-party facility. Power is provided by a solar array with a generator used to supply supplemental power. There will be two employees on site at peak.

RECOMMENDATION(S):

That the Planning Commission:

1. Adopt the resolution, (Attachments 1) which does the following:
 - a. Finds the CannaDreams, LLC project statutorily exempt from the California Environmental Quality Act (CEQA) per Section 15270 (Projects which are Disapproved) of the CEQA Guidelines.
 - b. Finds the required findings for approval cannot be made.
 - c. Denies the CannaDreams, LLC Special Permits.

DISCUSSION:

Project Location:

The project is located in the Ettersburg area, on the west side of Kings Peak Road, approximately 2.4 miles south from the intersection of Wilder Ridge Road and Kings Peak Road, on the property known as 8700 Kings Peak Road.

Present General Plan Land Use Designation:

Residential Agriculture (RA), 2017 General Plan, Density: 160 acres per unit, Slope Stability: Moderate Instability (2) & High Instability (3).

Present Zoning:

Unclassified (U)

Environmental Review:

This project is exempt from environmental review pursuant to Section 15270 of CEQA Guidelines (Projects which are Disapproved).

State Appeal:

The proposed project is NOT appealable to the California Coastal Commission.

Major concerns:

Surrounding public lands with designated critical habitat for federally threatened species and Bureau of Land Management opposition.

Executive Summary:

CannaDreams, LLC seeks a Special Permit for the continued operation of an existing cannabis cultivation site consisting of 9,500 square feet of outdoor cannabis cultivation in greenhouses and 950 square feet of ancillary nursery space, a Special Permit to reduce the setback to BLM public land, and a Special Permit for reduction of the Streamside Management Area setback to allow for a hydroelectric facility on the onsite stream and for the point of diversion. Irrigation water is sourced from a point of diversion and is subject to forbearance. There will be 171,000 gallons of water storage on the parcel designated for cannabis irrigation and 6,500 gallons reserved for fire suppression. The applicant's estimated annual water use is approximately 88,700 gallons. Drying will occur onsite and other processing will occur offsite at a licensed third-party facility. Power is provided by a solar array with a generator used to supply supplemental power. There will be two employees on site at peak.

Planning staff initially prepared a report recommending approval, but a referral agency's response on November 5, 2024, to the Notice of Hearing expressed significant concerns that suggest that the findings for approval might not be able to be made.

Water Resources:

Annual water usage for irrigation is estimated to be roughly 88,700 gallons, or 9.3 gallons per square foot per year. Existing water storage totals 89,500 gallons of water tanks available for irrigation. The

applicant intends to install additional tanks to increase that total to 171,000 gallons. Water for irrigation is sourced by a stream diversion. As noted in the Cultivation and Operations Plan (**Attachment 4.A**), irrigation is performed by hand and via drip irrigation. Irrigation would occur early morning or late evening in order to reduce evaporation.

The applicant's Waste Discharger Identification (WDID) on the Notice of Applicability to the Waste Discharge Requirements Water Quality Order WQ-2017-0023-DWQ is WDID:1_12CC404168. The applicant has provided the site management plan (SMP) that was submitted to the North Coast Regional Water Quality Control Board (NCRWQCB).

The project was referred to the Environmental Health Division (DEH) on September 27, 2017, and response was received on May 31, 2018. DEH requested evidence verifying sufficient use of portable toilets to serve staff or a written assessment from a qualified septic consultant confirming a Tier 0 status for the existing onsite waste treatment serving the dwelling.

Per Humboldt County Code Section 314-61.1.7.6.3, the Streamside Management Area (SMA) may be reduced or eliminated when the County determines, based on specific factual findings, one of the following: the mapping of the SMA is not accurate, there are no in-channel wetland characteristics or off-channel riparian vegetation, or the reduction will not significantly affect the biological resources of the SMA on the property. The aspects of the project that require the reduction of the SMA are the continued use and maintenance of the point of diversion and the installation, use, and maintenance of a new hydroelectric system, neither of which should significantly affect the biological resources of said SMA. The hydroelectric system is dependent on permitting by CDFW and will be required to continuously meet CDFW's requirements to protect biological resources, if approved by CDFW. The hydroelectric system would also be installed on an intermittent stream, sourced from a spring, and does not provide connectivity for aquatic wildlife. The initial disturbance of the point of diversion for irrigation is limited. The diversion is subject to a Streambed Alteration Agreement (LSAA) with CDFW and the watercourse has a water right. The existing LSAA onsite expired September 16, 2024. Diversion quantity is reported to and limited by the State Water Resources Control Board (SWRCB).

Energy:

The applicant has proposed to utilize an existing solar array and a hydroelectric system which is pending California Department of Fish and Wildlife (CDFW) approval. The applicant has identified an additional area targeted for installation of solar arrays in the event hydroelectric power is not approved by CDFW. The area targeted is in close proximity to cultivation areas, does not require removal of trees, and does not encroach in any riparian areas. There is a backup generator onsite for supplemental power.

The project is not expected to require significant power, as the project is entirely light deprivation cannabis cultivation, and trimming occurs offsite at a licensed third-party processing facility. The aspects of the operation that utilize electricity include water pumps, fans, dehumidifiers, and nursery

space.

Grant Funding:

The applicant did receive \$60,000 in grant funds as part of the Water Storage and Conservation Grant Program and \$30,000 in grant funds as part of the Renewable Energy Grant Program. A primary goal of these state-funded grants was to assist provisional licensees obtain final permit approval. A portion, if not all, of the funds issued to the applicant have already been utilized to implement additional water storage and solar power infrastructure. There is an open question regarding what action will need to be taken regarding the installed infrastructure if this project is denied.

Public Trust Analysis:

The common law Public Trust Doctrine protects sovereign lands, such as tide and submerged lands and the beds of navigable waterways, for the benefit, use and enjoyment of the public. These lands are held in trust by the State of California for the statewide public and for uses that further the purposes of the trust. The hallmark of the Public Trust Doctrine is that trust lands belong to the public and are to be used to promote publicly beneficial uses that connect the public to the water. The spring that this project diverts from provides water to a Class II watercourse which is tributary to North Fork Bear Creek, which itself is a tributary to Bear Creek, a tributary to Mattole River. These streams provide water to support the health of this River. Bear Creek provides habitat for sensitive aquatic species including Coastal Rainbow Trout. Class II streams, however, have limited value as fisheries and generally occur upstream of migration barriers, or have other habitat features that prevent their use by migratory fish. The Mattole River is used for recreation and supplies water for agricultural, public, and industrial uses. Mattole River consists of a combination of navigable sections and whitewater rapids.

The watercourse has a water right and is pumped to storage outside of the forbearance period for use during the forbearance period. The applicant reports irrigation water usage and diversion to the State Water Resources Control Board (SWRCB) annually and requires a Streambed Alteration Agreement (LSAA) established with the California Department of Fish and Wildlife (CDFW). The SWRCB prohibits diversion for cannabis activities during the forbearance period of April 1 through October 31 to protect water bodies during dry seasons. By performing the improvements required by the LSAA, forbearing according to SWRCB's requirements, and adhering to the standards in the Site Management Plan, the project's water use should have a less than significant impact on the Public Trust resources.

The proposed hydroelectric system would be installed on an intermittent stream that is tributary to North Fork Creek and is sourced from a spring. The stream does not provide connectivity for aquatic wildlife and there will be no net loss of water removed from the stream for the hydroelectric system, therefore the hydroelectric system should have no impact on the Public Trust resources.

Biological Resources:

The nearest Northern Spotted Owl activity center is approximately 0.8 miles from the cultivation sites. Mapped Marbled murrelet habitat is approximately 88 feet from the nearest cultivation area. A foothill yellow-legged-frog specimen was collected in 1956, and the location is mapped as being somewhere within an area approximately 1.2 miles in diameter. Portions of the property, including the cultivation areas, fall within this 1.2 mile diameter area.

To determine project impacts on these species, as well as other species potentially in the vicinity of the project, the applicant submitted a Preliminary Biological Resource Report prepared by Olofson Environmental, Inc. and Emerald Hills Environmental, LLC. The Report found that twelve sensitive species had the potential to occur in the study area, however only two of the twelve had the potential to be impacted by the cannabis operation, namely the Northern Spotted Owl (NSO) and Marbled Murrelet. The Biological Report indicated that provided the project is compliant with noise standards, compliant with dark sky standards, and rodenticides are prohibited, potential negative impacts to NSO and Marbled Murrelet are low and no further action should be required.

The study further found that seven sensitive plant species had the potential to occur in the study area, however project activities would not occur within potential sensitive habitat. The study recommended if new development were proposed in wooded areas on the parcel or within riparian habitat, protocol level botanical surveys should be completed. Ongoing requirements/development restrictions require the applicant to adhere to all recommendations included in the Biological Report.

CDFW inspected the property in October 2024 and identified unused waterline scattered throughout the parcel, uncontained compost, and the potential for impact to Northern Spotted Owls. CDFW recommended conditions to mitigate these potential issues.

Access:

The project is located in the Ettersburg area. The property is accessed via a private driveway from Kings Peak Road, which is a County-maintained road. The private drive trends south and west to the project site. Kings Peak Road is accessed from Shelter Cove Road. The applicant has submitted a road evaluation report prepared by a licensed engineer identifying that a three-mile portion of Kings Peak Road, beginning from its intersection with the private access road, is not developed to the equivalent of a Category 4 road standard. However, if the engineer recommendations in the Roadway Evaluation are completed, the road can accommodate the traffic associated with this cannabis operation and all known cannabis operations utilizing the road. The project proposes the use of two employees who are expected to be onsite at different times of the year and the owner/operator lives onsite. The proposed project is not anticipated to generate significant additional vehicle trips or road use.

Referral responses from the Bureau of Land Management (BLM) in July of 2019 and again in June of 2023 indicated that the applicant did not have a legal right-of-way to cross BLM land and were therefore not legally able to access the subject property. The applicant submitted a right-of-way

application to BLM, and the Planning Division received documentation of the right of way grant which was signed on June 27, 2024. The right of way grant specifies that it is for residential purposes only and commercial uses are not allowed. The right of way grant also specifically states that it may be terminated if BLM determines that the permit holder is manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled substance on the public land that is the subject of the right of way grant.

Public Land:

The subject property is an inholding surrounded by land owned and managed by the Bureau of Land Management (BLM). The project was referred to BLM, who provided comments dated June 26, 2023, which indicated concerns regarding legal access to the property across BLM lands, sediment and nutrient delivery to adjacent water courses, and proximity to Northern Spotted Owls. BLM requested that any permitting be conditioned to avoid impacts to federally threatened coho salmon, Chinook salmon, and steelhead. Conditions to demonstrate ongoing enrollment with the State Water Resources Control Board and adhere to the requirements of the General Order and the prepared Site Management Plan have been drafted. The project would have been required to properly store any fertilizers, nutrients, pesticides, fuels, and any other regulated products utilized for the cannabis operation. Cultivation areas and cannabis infrastructure have all demonstrated adherence to the required setbacks to riparian areas, and the applicant has indicated irrigation will occur in a manner that will minimize the risk of runoff, thereby reducing the risk of nutrient or sediment delivery to any nearby watercourses.

BLM additionally requested that the project be conditioned to avoid impacts to Northern Spotted Owl. Conditions to the project have been drafted to limit project related noise to 50 decibels at the forest edge or 100 feet from the noise source, whichever is more restrictive, to meet dark sky standards, and to prohibit the use of anticoagulant rodenticides. No lights are proposed for use in cultivation areas, except for the ancillary propagation area, and the applicant has proposed to utilize solar and hydroelectric systems to supply power for the project, with a generator onsite for emergency backup use only. Recommended conditions of approval would have included a requirement for the applicant to demonstrate compliance with light and noise standards prior to use of the nursery or backup generator.

On November 5, 2024, BLM responded to the notice of hearing with additional comments. The first comment expressed that the right-of-way they had issued prohibits transportation of controlled substances over the roadway. Cannabis and its byproducts are legally considered to be controlled substances. That comment requested documentation from the applicant regarding how cannabis would be transported off the property without using the public roadway. While no such documentation has been received, the applicant has verbally stated that he is considering the use of drones or a helicopter to transport cannabis from the property to the public roadway. The second and third comments reiterate concerns regarding the critical habitat for special status species including certain salmon, and Northern Spotted Owls, as managed by the Bureau of Land Management in the

surrounding King Range National Conservation Area. The fourth comment references the CMMLUO's requirement for cannabis cultivation activities to adhere to 600-foot setbacks to publicly owned lands managed for habitat purposes, requesting that the County uphold this part of the Ordinance. This comment omitted the portion of the code allowing for reductions to the setback with a Special Permit, which implies opposition to the project. Planning staff met with BLM staff on November 21, 2024, and they made clear that they do not support approval of the exception due to concerns about proximity to sensitive habitat. Because of the proximity to sensitive habitats and BLM's opposition to the project, it may not be appropriate to issue a Special Permit for setback reduction.

The Planning Commission has granted setback reductions to public lands, even over the objection of BLM in some instances. Those situations have typically been where the cannabis property was located on the edge of the larger BLM and private land interface. This particular property is somewhat unique in that it is entirely surrounded by lands owned by BLM and managed for wildlife habitat, these lands, including the subject property contain high value forest habitat, and the operation would be as close as 88 feet from the BLM lands. The proximity to BLM lands that are of special concern to BLM appears to conflict with the management goals that BLM has for their lands.

Geologic Suitability:

The project parcel is mapped in the County GIS as moderate to high instability. One of the existing cultivation sites is proposed to remain on the high instability portion of the parcel. The existing cultivation appears to be located in areas mapped as 30% to 50% slope, but aerial imagery suggests the graded flats at these cultivation sites have been present since at least 2012.

Security and Safety:

The project utilizes a locked gate on the only entry road to the property. Security cameras, motion detectors, and dogs are present for additional security. In addition to the 171,000 gallons of water tanks, two separate tanks are designated for emergency fire protection, specifically a 4,000-gallon tank and 2,500.

The project site is within the State Responsibility Area and is mapped as the Telegraph Ridge Fire Protection District response area. Planning staff referred the project to CalFire on September 27, 2017, and received their standard response on October 5, 2017. CalFire provided additional comments on October 3 and November 5, 2017, noting that a harvest permit from CalFire may be required prior to expansion and that any artificial light shall not escape at a level that is visible from neighboring properties. The project does not propose expansion.

Employee Housing

The Operations Plan indicates intent to provide employee housing, but insufficient information has been provided to analyze housing as part of the proposal and there is no employee housing on the site plan.

Timber Conversion:

The cultivation of cannabis will not result in the net conversion of timberland. Review of aerial imagery dating back to 2004 indicates the site contained existing open areas along the northern and southeastern portions of the property; however, it appears that timber was removed from the site between 2009 and 2015 to accommodate cannabis cultivation infrastructure.

No additional tree removal was proposed or would have been authorized by this permit.

Tribal Consultation:

The project is located in the Bear River Band of the Rohnerville Rancheria and Intertribal Sinkyone Wilderness Council Aboriginal Ancestral Territories. The Bear River Band referral response recommended a condition of approval that the project adhere to inadvertent discovery protocol to protect cultural resources.

Consistency with Humboldt County Board of Supervisors Resolution No. 18-43:

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. If the project were approved, the total approved permits in this Planning Watershed would be 231 cultivation permits and the total approved acres would be 81 acres of cultivation.

Environmental Review:

This project is exempt from environmental review pursuant to Section 15270 of CEQA Guidelines (Projects which are Disapproved). 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 (MND) that was adopted for the Commercial Medical Marijuana Land Use Ordinance and has prepared a site-specific addendum to the MND for consideration by the Planning Commission (See Attachment 3 for more information).

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies and all responding agencies except for the Bureau of Land Management have either responded with no comment or recommended approval or conditional approval. (Attachment 5)

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could approve the application with the attached Alternative Resolution (Attachment 2) and its associated conditions. The Planning Commission may also propose additional conditions with this approval in accordance with HCC Section 312-4.1 et seq.

ATTACHMENTS:

1. Resolution
2. Alternative Resolution
 - A. Conditions of Approval
3. Alternative CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
 - A. Operations Plan
 - B. Site Plan
 - C. Location Maps
 - D. Site Management Plan
 - E. Road Evaluation
 - F. Biological Resource Report
 - G. BLM Grant of Right-of-Way
5. Referral Agency Comments and Recommendations
6. Watershed Map

APPLICANT, OWNER, AGENT AND PLANNER INFORMATION:

Applicant

CannaDreams, LLC, C/O Philip Kreider, 31304 42nd Pl. SW, Federal Way, WA 98023

Owner

Philip Kreider, Po Bx 2127, Redway, CA 95560

Agent

N/A

Planner

Please contact Augustus Grochau, Planner, at agrochau@co.humboldt.ca.us or 707-441-2626 if you have questions about this item.