

**Recommended Commission Action**

1. Describe the application as a public hearing.
2. Request staff to present the application and staff report;
3. Open the public hearing and receive testimony;
4. Close the public hearing and adopt the Resolutions to take the following actions:

*1) Find that the Commission has considered the Addendum to the adopted Mitigative Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) as described by Section §15164 of the State CEQA Guidelines, 2) make all of the required findings for approval of the Conditional Use Permit and Special Permits and 3) approve the MDRV Realty Holdings, LLC Conditional Use Permit and Special Permits as recommended by staff subject to the recommended conditions.*

**Executive Summary:** MDRV Realty Holdings, LLC seeks a Conditional Use Permit for 14,450 sf of existing outdoor & 3,600 sf of existing mixed-light cannabis cultivation with 1,480 sf of ancillary propagation area. The proposed project includes a Special Permit for the relocation of a historic cultivation outside of a streamside management area. Water for irrigation is provided by a spring diversion (POD 2 under Water Right Certificate H100730), and a Special Permit is being requested to approve the continued use and maintenance of the spring diversion. Annual water usage is estimated at 150,000 gallons (7.68 gal/sf/yr). There is a total of 110,000 gallons of existing water storage on-site and 63,000 additional water storage is proposed. An additional Special Permit is being requested to reduce the 600-foot setback to public lands (SRNF), to approximately 497 feet.

The project will consist of 3,600 sf of mixed-light cultivation, 6,400 sf of outdoor light-deprivation cultivation, 8,050 sf of full-sun outdoor cultivation, and 1,480 sf of ancillary propagation area. Drying and curing will occur on-site and trimming will occur off-site at a licensed processing facility. The applicant shall keep documentation of proof of third-party processing service, to be furnished during an annual inspection (**Ongoing Condition B.1**). Up to two employees will be used on-site. Power is provided by one generator, and future solar is proposed. The applicant utilizes portable toilets to serve on-site wastewater treatment system needs. The project was referred to the Department of Environmental Health (DEH) on April 26, 2019, and comments were received by the agency on April 30, 2019, recommending conditional approval for the project. The applicant shall provide receipts or other equivalent documentation annually to the Planning Division for proof of portable toilet service until the applicant has obtained proof of a permitted septic system on-site that meets the needs for the project (**Ongoing Condition B.2**).

The project was referred to the Building Division on April 26, 2019, and a site inspection was conducted on June 14, 2019. Comments from the Building Division included to submit a revised Site Plan and obtain the necessary building permits for all structures and grading associated to cannabis activities on-site. A revised Site Plan has been submitted. There are a total of two (2) mixed-light greenhouses, four (4) light-deprivation greenhouses without the use of supplemental lights, one (1) ancillary propagation greenhouse, two (2) harvest storage sheds, two (2) generator sheds, and five (5) storage sheds. The applicant is conditioned to obtain building permits for all existing and proposed structures with a nexus to cannabis, and historic grading activities association with the cultivation area (**Condition A.6 & A.7**).

**Energy**

The applicant currently utilizes two (2) generators on-site, which are housed within generator sheds, and the applicant plans to transition to on-site solar power. The project is conditioned to provide all power from 100% renewable energy source by the 2026 cultivation season, and the applicant shall submit an energy plan show how all power will be provided by renewable energy sources (**Condition A.8**). The applicant shall submit an updated Site Plan to show the proposed location for the solar array, and shall permit the proposed solar system with the Building Division by 2026 (**Condition A.9**). Once the project

transitions to full renewable energy source, one (1) generator will be kept on-site for emergency back-up purposes only.

### **Setbacks**

The project is located within 600 feet of public lands, the Six Rivers National Forest (SRNF). The nearest cultivation area is located approximately 497 feet to the SRNF boundary, and the applicant is requesting a Special Permit to allow a setback reduction to public lands. The project was referred to the US Forest Service on April 26, 2019, and no comments were received. The project is consistent with recreational use on public lands as the proposed project is not located near developed campgrounds, trails, or other related public facilities.

The adjacent public land is subject to the Land and Resource Management Plan - Six Rivers National Forest 1995 (L&RMP). The project is consistent with the L&RMP because the cultivation activities will minimize impacts to biological resources and wildlife by adhering to International Dark Sky Standard, reducing light and noise impacts, and transitioning to 100% renewable energy source.

### **Timber Conversion**

The site contains timber conversion, and the applicant had a Timber Conversion Report (TCR) prepared by Blair Forestry Consulting, dated January 13, 2018. The TCR was combined for the two (2) adjacent parcels owned and operated by the applicant, and estimates that a total of 1.15 acres of timber conversion occurred in total on both parcels. The TCR recommends that the applicant address road surface points on roads leading to conversion sites and watercourse crossings at SC #8 SC #9 & SC #10, and to treat slash and woody debris around Conversion Area A and B (**Condition A.10**). The project and TCR was referred to CalFire on April 26, 2019, and the agency replied stating that they had no comments on the proposed project.

### **Water Resources**

The project will source water from an on-site spring diversion, POD2 under Water Right Certificate H100251 & H100730. The project was referred to the State Water Board Division of Water Rights on April 26, 2019, and comments were received on April 30, 2019, recommending approval for the project under Water Right Certificate H100251. Water Right Certificate H100251, dated 8/27/2018, lists the previous applicant as the Right Holder. An updated Water Right Certificate H100730, dated 11/25/2019, lists the Right Holder as the current property owner, adds the on-stream pond (which will be used for fire suppression only), and increases the overall water allowed to be diverted under the Water Right. The Water Right is shared with the adjacent parcel (application PLN-11214-SP), which will only utilize POD 1 in the Water Right Certificate, and all water sources are separate for the adjacent projects. Water Right Certificate H100730 allows for the annual diversion of up to 0.94 acre-feet (306,300 gallons), which is a sufficient amount of water for the purpose and use on APN's: 208-241-006 & 208-241-007 (which are estimated to use a total of 200,000 gallons of water annually). The applicant shall adhere to the terms and restrictions in the Water Right Certificate H100730, or subsequent Water Right, such as forbearance and diversion rate requirements (**Ongoing Condition B.3**). Estimated annual water needed for irrigation on-site is approximately 150,000 gallons (7.68 gal/sf/yr). A total of 110,000 gallons of water storage exists on-site in twenty-five (25) hard tanks, and one (1) 20,000 gallon bladder. There are two (2) additional 20,000 gallon water bladders located on the adjacent parcel to the north (APN: 208-241-006) which are temporarily designated as water storage used for the subject parcel 208-241-007, increasing the total water storage designated for the project to 150,000 gallons. In the event that one of the parcels is conveyed to a different owner, the applicant shall either discontinue the use of the bladders on the adjacent parcel or shall obtain an easement for the access and use of the bladders located on APN: 208-241-006 (**Condition A.11**). All water bladders will be decommissioned within two years of the approval date, and an additional 63,000 gallons of water storage is proposed for a total of 153,000 gallons of water storage on-site designated for irrigation needs. The applicant shall remove the 20,000 gallon water bladder, and shall add 63,000 gallons of additional water storage in hard tanks within two years from the projects approval date. (**Condition A.12**). The applicant shall also install a water monitoring device to monitor the water diverted from POD 2 and use for irrigation. (**Condition A.13**)

The site was historically enrolled in the North Coast Regional Water Quality Control Board's Order No. R1-2015-0023, under WDID: 1B161267CHUM. There was historic cultivation area found to be within a streamside management area (SMA) on-site, and this application includes a Special Permit for the relocation of historic cultivation and restoration of the SMA. The applicant has obtained a Restoration Plan for the historic cultivation area, prepared by Emerald Hills Environmental dated August, 31, 2018. The Restoration Plan describes that the cultivation area was removed from the SMA in 2017, and relocated to an environmentally superior location on-site, and states that the historic cultivation site has become vegetated by local grasses but the soils were largely loose and consolidated. Restoration activities include removal of the sidecast berm features, fill and compacting the "divots", and contouring the surface so that surface water will spread evenly over the ground surface without forming channels or ponds. The applicant shall submit the Restoration Plan to the California Department of Fish & Wildlife (CDFW) and obtain approval for the instream restoration work through a Lake or Streambed Alteration Agreement. The applicant shall submit a copy of the final approved Restoration Plan and Streambed Alteration Agreement with CDFW to the Planning Division, and shall adhere to the work described in the final Agreement and Restoration Plan (**Condition A.14**).

The applicant has also enrolled in the State Water Resources Control Board's (SWRCB) General Order WQ 2019-0001-DWQ, as a Tier 2 Low Risk site. A Notice of Applicability letter dated December 26, 2019, was submitted as proof of enrollment under WDID: 1\_12CC417973. The applicant has had a Site Management Plan (SMP) prepared by Mother Earth Engineering, to show mitigation measures required for the project to meet Water Board standards, received December 8, 2021. The SMP was prepared for both adjacent parcels APN's: 208-241-006 & 208-241-007, and lists Best Practicable Treatment or Controls (BPTC) for the project. The applicant shall adhere to the recommendations and BPTC's listed in the SMP (**Ongoing Condition B.4**).

The applicant has obtained a Streambed Alteration Agreement (SAA No. EPIMS-HUM-15839-R1) with the California Department of Fish & Wildlife (CDFW) for all in-stream work associated with the project. The SAA includes work associated with the spring diversion, the on-stream pond used for fire suppression only, and six (6) stream crossing upgrades. The applicant is conditioned to abide by and adhere to the terms, project description and work outlined within the final signed SAA No. EPIMS-HUM-15839-R1 with CDFW (**Ongoing Condition B.5**).

#### **Fire Hazard**

The project is located in an area designated to have high fire hazard severity, and is within the Ruth Lake Community Services District (RLCSD) for fire response. The project was referred to the RLCSD on April 26, 2019, and no comments were received from the agency. There is ample room on-site for a firetruck turnaround, and there is an on-stream pond on-site designated for fire suppression needs only.

#### **Biological Resources**

The project is located approximately 0.85 miles to the nearest known Northern Spotted Owl (NSO) activity center, and no rare or endangered species are shown on or near the subject parcel in the California Natural Diversity Database (CNDDDB). The applicant has enrolled in the SWRCB's Order No. 2019-001-DWQ for waiver of waste discharge, all cultivation areas are located outside of any streamside management areas on-site, and the applicant plans to add a future solar system on-site. As the site is pre-existing, and there is no new development proposed, the applicant was not required to provide a Biological Report for the project. The applicant is required to comply with International Dark Sky Standards, and shall not allow any light to escape from mixed-light or nursery greenhouses from dusk to dawn, and shall ensure that all noise levels do not go above 50 decibels at any tree line or 100 feet when noise generating equipment are in use (**Ongoing Conditions B.6 & B.7**).

#### **Tribal Cultural Resource Coordination**

The project is located in the Bear River Band Aboriginal Ancestral Territories. The project was referred to the Northwest Information Center (NWIC), and the Bear River Band Tribe on April 26, 2019. The NWIC replied on May 6, 2019, recommending that the local Native American tribes be contacted regarding traditional, cultural, and religious heritage values. The Bear River Band THPO replied on July 12, 2019

requesting a Cultural Resource Survey (CRS) for the project. The applicant has obtained a CRS for the project site, which was prepared by Dimitra Zalarvis-Chase, M.A., RPA, with DZC Archaeology & Cultural Resource Management, dated December 2019. The CRS states that the archaeological survey was negative for cultural resources, and that there will be no adverse effects or changes to any historic resources on the project site. The applicant shall adhere to Inadvertent Discovery Protocols, as requested by the Bear River Band THPO on December 29, 2021 (**Informational Note 3**).

### **Access**

Access to the site is from Eight Mile Ridge Road, from County Line Creek Road, from State Hwy 36. Both Eight Mile Ridge Road and County Line Creek Road are non-county maintained roads off of Hwy 36. The applicant has submitted a Road Evaluation Report (RER) form for the access route from Hwy 36, (calling Eight Mile Ridge Road as Ridge Road, and County Line Creek Road as Salyer Mad River Road, named as such on Google Earth) which includes photos and a route map showing photo locations taken at pinch point areas on the road. The RER designates the private access roads as being developed to the equivalent of a category 4 standard, and states that the roads are adequate for the proposed use without further review from the applicant. All approved projects off of the access road will be required to have a Road Maintenance Association developed and will be required to maintain the road through the County's post-approval monitoring team. The project was referred to the Department of Public Works on April 26, 2019, and comments were received on April 29, 2019. Comments from Public Works stated that the access route is from a series of non-county maintained roads that connect directly to State Hwy 36, and recommended that the project be referred to CalTrans. The project was referred to CalTrans on July 18, 2019, and no comments were received by the agency.

### **Public Comment**

A public comment from an anonymous neighbor was submitted in the form of a phone call and also in a subsequent email. Another neighbor attended the previous hearing date on March 3, 2022, and stated their same concerns regarding the project. The public commenters addressed concerns about the constant use and road damage of up to one mile of Eight Mile Ridge Road used by employees between the two adjacent parcels (APN's: 208-241-007 & 208-241-006 owned and operated by the applicant) which runs through three (3) neighboring parcels, safety concerns regarding unsafe traffic on the access roads, theft issues with applicant's employees, concerns about the reported annual water usage being underestimated, concerns about the use of a spring located on Six Rivers National Forest for cannabis irrigation, safety concerns regarding fire hazard with generator usage, gates being left unlocked, and light and noise pollution complaints.

A response to the public comment was received by the applicant on March 21, 2022, addressing the concerns stated by the neighbors. The applicant states that he purchased the properties last year, and 2021 was the first cultivation season run by the current applicant. The applicant states that he never met any neighbors at the site, and that the easement road that connects the two properties does not pass any residences that he is aware of. Nor was the applicant aware of any theft allegations, or any presence of light or noise pollution, which may have occurred during the previous applicant's ownership of the project. The applicant has also stated that his employees share the work through both projects, but in the event that one project is sold, they would not utilize more than two (2) employees per project, and would not result in more than 1 vehicle trip (but in actuality 2 vehicle trips, one to and one from the site) per day per parcel. The applicant has also stated that they will discontinue the use of Eight Mile Ridge Road to access the two sites and will instead utilize a skid trail that connects the two adjacent parcels if the community desires. However, as there is no evidence that this skid road is developed to any suitable extent this is not recommended for use by County staff. The Road Evaluation Report supports the use of the primary road to continue to be utilized.

The applicant does have a Streambed Alteration Agreement (SAA No. EPIMS-HUM-15838-R1) with CDFW allowing the use of the spring located on the Six Rivers National Forest APN: 208-241-005, to be used for domestic purposes only on APN's: 208-241-006 & 208-241-007. There is also an appropriated Water Right (D030916) which expired on July 1, 2014, and the applicant has submitted a request to renew the Water Right for the use of domestic purposes on APN's: 208-241-006 & 208-241-007. The applicant shall be

informed that the spring diversion on Six Rivers National Forest is not allowed for the use of cannabis irrigation (**Informational Note 4**).

**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 cultivation permits and acres which may be approved in each of the County's Planning Watersheds. The project site is located in the Mad River Planning Watershed, which under Resolution 18-43 is limited to 334 permits and 115 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 65 cultivation permits and the total approved acres would be 24.73 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).

**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 (CUP) and Special Permits (SP).

**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.