

Eubanks Farms, LLC

Record Number: PLN-12443-CUP

Assessor's Parcel Number: 220-081-012

Recommended 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:

Adopt the Resolution to:

1. Find that the Commission has considered the Addendum to the adopted Mitigated Negative Declaration for the Commercial Medical Land Use Ordinance (CCMLUO), as described by Section §15164 of the State CEQA Guidelines;
2. Make the required findings for approval of the Conditional Use Permit; and
3. Approve the Eubanks Farms, LLC Conditional Use Permit and Special Permit as recommended by staff subject to the recommended conditions.

Executive Summary Eubanks Farms, LLC seeks a Conditional Use Permit (PLN-12443-CUP) for an existing 15,600 square feet (SF) of outdoor cannabis cultivation in eight (8) greenhouses and one (1) full-sun outdoor cultivation area, and a Special Permit for work within the Streamside Management Area (SMA) for culvert replacement and crossing upgrades, as recommended by the Site Management Plan. Plants are propagated at a licensed nursery offsite.

The site is zoned as Unclassified (U) as defined in the Humboldt County 2017 General Plan Update. Drying and processing occur onsite in two sheds (500 SF and 425 SF). Up to five (5) employees are be required for project operations. The primary source of electrical power is a 45-kW generator. The primary use of generator power is not allowed to occur beyond December 31, 2024. To ensure that generator use is not extended beyond this date, the project has been conditioned to either connect to a utility or have an alternative source of power prior to January 1, 2025 (**Condition 9**).

Water Resources

Irrigation water is sourced from a point of diversion (POD) on an unnamed spring which is a tributary to Eubank Creek (Stafslie Spring #3, or Primary POD). Estimated annual water use is 162,500 gallons (10.4 gal/SF). Water is stored in twenty (20) 5,000-gallon tanks, six (6) 4,500-gallon tanks, one (1) 2,500-gallon tank, and one (1) 1,350-gallon tank. Total water storage is 130,850 gallons. The project area is located within the Mattole River watershed.

A Site Management Plan (SMP) was prepared in fulfillment of State Water Resources Control Board (SWRCB) General Order WQ 2017-0023-DWQ. The document was prepared to meet the North Coast Regional Water Quality Control Board (NCRWQCB) requirements for Tier 2 discharges of waste resulting from cannabis cultivation (WDID No. 1B171364CHUM). The SMP was prepared jointly for the subject parcel and an adjacent parcel (220-072-008) under the same ownership. The subject parcel includes Eubank Creek, a Class I stream, and two (2) unnamed Class II streams. There are a total of five (5) stream crossings within the project boundary. The applicant seeks a Special Permit for work within the Streamside Management Area (SMA) for culvert replacement and crossing upgrades, as recommended by the SMP.

The SMP identifies the following recommendations and corrective actions on access roads and ATV trails, to bring the project into compliance with SWRCB policies and reduce the erosive impacts of cultivation (**Condition 10**).

- Improve ATV Trails 1 and 2 to reduce the impacts of erosion and sediment delivery to nearby watercourses. Decommission a 500-foot section of ATV Trail 2.
- Apply rock to bare surfaces of all access roads to reduce the impacts of erosion.

- Maintain and improve all existing water bars and rolling dips on ATV trails by clearing them of sediment buildup.
- Decommission two (2) stream crossings (STX-4 and STX-5). Excavate crossings to natural channel gradient and set channel banks back at a 2:1 ratio. Recontour the road prism to match natural topography.
- Install a gate at the top of ATV Trail 2 to discourage non-residents from accessing the trail.
- Remove non-native soils, potting soils, and woody debris at disturbed site SD-1. Recontour the site to a stable gradient. Reseed fill slope and cover in mulch.
- Grade and recontour disturbed site SD-2 to a stable gradient. Reseed fill slope and cover in mulch.
- Pull back loose and eroded sediment from an area marked "Rut" in the SMP and compact it back into the ATV trail surface. Install rolling dips uphill of the Rut to cut off surface runoff from the ATV trail.
- Remove the undersized culvert at stream crossing STX-1 and replace it with an 18-inch culvert.
- Replace the ford at STX-2 with an 18-inch culvert.
- Remove the undersized culvert at STX-3 and replace it with a 48-inch culvert.
- Install rock check dams in inboard ditches on ATV Trail 2.
- Implement winterization, maintenance, reporting, and construction sediment control measures per the specifications of the SMP.

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. 1600-2018-0515-R1). The LSAA addresses eight (8) project encroachments, including three (3) points of diversion from unnamed tributaries to Eubank Creek (PODs 1-3) and five (5) stream crossings (Crossings 1-5). The LSAA requires the following actions be completed no later than July 1, 2024, to address failing culverts (**Condition 11**).

- Install an armored fill crossing at Crossing 1.
- Replace the failing 18-inch culvert at Crossing 2 with a new minimum 18-inch culvert.
- Permanently remove and discontinue the use of Crossings 3, 4 and 5. Excavate each crossing to natural channel gradient and set channel banks back at a 2:1 ratio. Implement erosion control BMPs to stabilize and revegetate exposed soils surfaces.
- Install an armored fill crossing at the location indicated by Lat/Long 40.0938, -123.9704.

The LSAA also identifies the following specific recommendations and corrective actions to offset potential impacts to waterways within the area (**Condition 12**).

- Document all activities that occur within waterways at the project site.
- All work shall be confined to the dry weather period, from June 15 through October 15 of each year.
- Water diversion structures shall be constructed and maintained to not inhibit the movement of aquatic life.
- Erosion and runoff protection measures shall be placed and maintained along streambanks prior to any construction activities.
- The maximum instantaneous diversion rate from any point of diversion (POD) shall not exceed three (3) gallons per minute.
- The applicant shall bypass 90% of flow at all times at all PODs.
- No more than 300 gallons in any one day from all PODs combined shall be diverted cumulatively between April 1 and July 15 of each year.
- No more than 200 gallons shall be diverted in any one day from POD 1 between July 16 and October 31 of each year.
- No water shall be diverted from PODs 2-3 between July 16 and October 31 of each year.
- Work shall be completed by no later than July 1, 2024, and notification of completion shall be provided to California Department of Fish and Wildlife (CDFW) within seven (7) days of project completion.

Biological Resources

A list of potential special status species was generated in December 2021 using the following information systems: California Natural Diversity Database (CDFW 2021), Biogeographic Information and Observation System (BIOS), Northern Spotted Owl Viewer (CDFW 2021), and US Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC). Two (2) special status species appear within two (2) miles of the project area. The foothill yellow-legged frog, a state-listed endangered species, is located approximately 6,900 feet from the project area. The summer-run steelhead trout, a candidate for state-endangered status, is found within the Mattole River, approximately 7,900 feet from the project area. Project activities are not expected to produce adverse or cumulative effects to any special status species or habitat, due to the relatively small size of the project area and the type of proposed activities. Therefore, project impacts to biological resources are considered low and unlikely, with implementation of the mitigation measures identified in the CMMLUO Mitigated Negative Declaration (MND) adopted on January 26, 2016.

Tribal Cultural Resources Coordination

A cultural resources investigation was prepared by William Rich, M.A., RPA, of William Rich and Associates (February 2018). The report identified no cultural resources within the project area or a one-quarter mile buffer of the project area. No ethnographically-described Native American sites are located in the vicinity of the project area. Consultation letters were sent to Native American groups associated with the project area, including the Bear River Band of the Rohnerville Rancheria and Intertribal Sinkyone Wilderness Council. Erika Cooper, the Tribal Historic Preservation Officer for the Bear River Band of the Rohnerville Rancheria, requested to be notified if cultural resources were identified.

The report recommended establishing protocols to protect cultural resources and/or human remains which may be discovered inadvertently during project work. The standard Inadvertent Discovery Protocol will be used to protect artifacts or remains that may be discovered during project work (**Condition 13**).

Timberland Conversion Evaluation Report

Approximately 0.63 acre of land at the project area was converted from timberland to cultivation area without appropriate permits. A Timberland Conversion Evaluation Report (TCER) was prepared by Timberland Resource Consultants (January 24, 2020) to address unpermitted conversion areas and potentially recommend corrective actions at three (3) sites within the project area: Site 1 (0.36 acre converted), Site 2 (0.11 acre), and Site 3 (0.16 acre). No conversion areas were documented within watercourse and lake protection zones (WLPZs) or within a riparian buffer. Chris Carroll, the registered professional forester who prepared the report, recommended no corrective actions at any of the converted sites within the project area.

Access

The project area is located on the north and south sides of Eubanks Road, approximately 1.12 miles west from the intersection of Ettersburg-Honeydew Road and Eubanks Road, in the Ettersburg area in southern Humboldt County. Using forms provided by Humboldt County Department of Public Works (DPW), the applicant evaluated a 1.1-mile segment of Eubanks Road and 0.65-mile segment of Ettersburg-Honeydew Road, and found both roads to be developed to the equivalent of a road category 4 standard. DPW recommended standard conditions of approval related to driveway and private road intersections and visibility (**Conditions 14 and 15**).

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.

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 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) and Special Permits (SP).

RECOMMENDATION: Based on a review of Planning and Building Department 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 Permit (SP).

ALTERNATIVES: The Planning Commission could elect to 1) not approve the project, or 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.

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.