



COUNTY OF HUMBOLDT

For the meeting of: 12/15/2022

File #: 22-1670

To: Planning Commission
From: Planning and Building Department
Agenda Section: Consent

SUBJECT:

Georgi Stoyanov Conditional Use Permit

Record Number: PLN-11816-CUP (filed 12/14/2016)

Assessor's Parcel Number: 221-201-007

Ettersburg area

A Conditional Use Permit for 11,600 square feet (SF) of existing outdoor cannabis and 1,190 SF of ancillary propagation. Irrigation water is sourced from three points of diversion and rainwater catchment. Estimated annual water use is 164,100 gallons. There will be a total of 164,100 gallons of onsite water storage. Processing occurs onsite. Power is provided by Pacific Gas and Electric Company (PG&E). A Special Permit is also requested for development within the Streamside Management Area for the continued use and maintenance of the points of diversion.

RECOMMENDATION(S):

That the Planning Commission:

1. 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 Georgi Stoyanov Conditional Use Permit); and
 - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Approves the Georgi Stoyanov; Conditional Use Permit subject to the recommended conditions of approval (Attachment 1A).

DISCUSSION:

Project Location: The project is located in the Ettersburg area, on the east and west side of Dutyville Road, approximately 0.5 miles north from the intersection Dutyville Road and Ettersburg-Honeydew Road, on the property known as 1677 Dutyville Road.

Access: Access to the site is via an access road from Dutyville Road (a private road) from Ettersburg-Honeydew Road, a County maintained category 4 roadway. A Road Evaluation Report for a 0.7-mile segment of Dutyville Road to the subject property was prepared by the applicant in January 2020 (Attachment 3), which indicates that the roadway is developed to the equivalent of a road Category 4 standard or better. The submitted road evaluation included sufficient photographic evidence to verify the roadway condition as described, including roadway width and line of sight. Per comments received from Department of Public Works, Land Use Division in January 2020, all driveways and private road intersections onto the County road shall be maintained

in accordance with the County's Sight Visibility Ordinance (County Code §341-1) and improve the access road that serves the project to current commercial driveway standards, which have been included as conditions of approval (**Conditions of Approval A.20-21**). Additionally, there is an active road association for the access road, "Dutyville Friends of the Road". To ensure access to the site is adequately maintained, as a condition of approval, the applicant shall join the "Dutyville Friends of the Road" Road Maintenance Association, provide evidence of enrollment, and pay fair share costs associated with maintaining Dutyville Road (**Condition of Approval A.22**).

Present General Plan Land Use Designation: Residential Agriculture (RA40) Density: 40 acres per dwelling unit, Slope Stability: Moderate instability (2).

Present Zoning: Forestry Recreation (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: None

Executive Summary: Georgi Stoyanov seeks a Conditional Use Permit to allow the continued cultivation of 11,600 square feet (SF) of existing outdoor cannabis 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 applicant also seeks a Special Permit for development within the Streamside Management Area (SMA) for continued use and maintenance of three (3) points of diversion (see the "Water Resources" discussion below for additional information). The site is designated as Residential Agriculture (RA40) in the Humboldt County 2017 General Plan Update and zoned Forestry Recreation with a minimum 40-acre building site (FR-B-5(40)). Cultivation currently takes place in the southeastern portion of the parcel within three (3) greenhouses utilizing light deprivation techniques (totaling 11,340 SF). Ancillary propagation (1,190 SF) occurs within a separate greenhouse located west of Greenhouse (GH) #1. Two (2) harvests are anticipated annually for a growing season that extends from April through October.

Processing occurs onsite within an existing two-story, 5,376-square-foot ag building. A maximum of three (3) people will be onsite during peak operations. Power is provided by Pacific Gas and Electric Company (PG&E). The operation is secured behind a gated access, and product and storage areas are locked.

Cultivation and Nursery Space: As noted above, the application is for 11,600 SF of existing outdoor cultivation and 1,190 SF of ancillary propagation. Based on the County's cultivation area verification, 11,600 SF of cultivation was in existence prior to the CMMLUO environmental baseline date of January 1, 2016. The ancillary nursery space equates to approximately 10.3% of the total current cultivation area, which exceeds what Planning Division staff and the Planning Commission have found allowable in the past (i.e., a nursery space of 10% of the cultivation area). the parcel is over 5 acres in size, the subject property is zoned FR, and slopes of where the cultivation and ancillary propagation are located on graded flats with slopes less than 5%, as stated in the Water Resource Protection Plan (WRPP) prepared for the property (discussed further below under the "Water Resources" section), and while irrigation water is not sourced entirely from a non-diversionary water source, a Special Permit is requested for continued use and maintenance of the point of diversion infrastructure. As such, new cultivation could be considered on the subject parcel, and therefore additional SF for propagation space is supported by Planning staff. However, as the current propagation space

exceeds what is typically allowed, a recommended condition of approval has been included to limit the amount of nursery space to 1,160 SF of ancillary propagation (10% of the cultivation area), and revise the Cultivation and Operations Plan and Site Plan accordingly (**Conditions of Approval A.6-7**). In addition, a recommended condition of approval has been added to require the propagation space be irrigated and supported solely by rainwater catchment (**Condition of Approval A.11**).

Furthermore, based on review of aerial imagery, it appears reorganization into greenhouses occurred on the subject property between 2016 and 2018, after the CMMLUO environmental baseline date. However, the cultivation type remains as outdoor, which is what was previously verified by the County as existing prior to January 1, 2016. Although light deprivation techniques are now utilized, artificial lighting is solely utilized for the ancillary propagation space. As such, Planning staff is supportive of the added greenhouses, and recommend an ongoing condition of approval to limit the use of artificial lighting to the ancillary nursery space only and not for the onsite cultivation (**Ongoing Condition of Approval B.2**).

Prior Onsite Relocation and Consolidation: The Cultivation and Operations Plan (Attachment 3) states that consolidation of cultivation areas has taken place on the subject site. This relocation was performed to centralize cultivation activities in an environmentally superior location to decrease the potential for runoff, reduce the overall cultivation footprint, and reduce vehicle travel onsite. The project is conditioned to provide, within 90 days, an updated site plan depicting the decommissioned cultivations areas (**Condition of Approval A.6**). Additionally, a qualified professional (i.e., professional biologist) shall assess the decommissioned areas and any remediation efforts that have occurred and prepare a Remediation Plan detailing any additional remediation efforts that are recommended to restore the areas, which shall be implemented with 6 months of project approval (**Condition of Approval A.8**).

Timber Conversion: A review of historic aerial imagery dating back to 2004 indicates a large open area existed within the southeastern corner of the property at this time, and that approximately five (5) trees were removed during the development of the cultivation areas between 2010 and 2012. It does not appear any timber removal occurred after January 1, 2016, nor is any additional tree removal requested or authorized by this permit.

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 onsite and submit a Timber Conversion Evaluation Report addressing previously unpermitted timber conversion and includes any remedial measures, as applicable. The applicant is required to adhere to and implement any recommendations by the RFP(**Condition of Approval A.13**).

Water Resources: Estimated annual water usage is 164,100 gallons (14.14 gal/SF) with peak demand occurring in July and August at approximately 36,000 gallons, respectively, per the table below.

Table 1. Monthly Water Use Estimates (in gallons)

Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
0	0	0	9,300	21,600	28,800	36,000	36,000	25,200	7,200	0	0

Total: 164,100 gallons

Onsite available water storage is 82,350 gallons in various hard-sided tanks, which constitutes approximately 50.2% of the annual water demand. Water for irrigation is currently provided by three (3) points of diversion and a permitted groundwater well (Permit No. 18/19-1053) that is also registered with the California

Department of Water Resources (WCR2019-010444). A Special Permit is requested under the project for development within the Streamside Management Area (SMA) for the continued use and maintenance of the points of diversion. The applicant proposes to add rainwater catchment and an additional 20,000 gallons of onsite water storage for the storage of rainwater and cease use of the well until a qualified professional assesses the well and determines it is not hydrologically connected to surface waters (see Amendment to Cultivation and Operations Plan in Attachment 1), which has been included as a condition of approval (**Condition of Approval A.9**). Prior to utilizing the well again in the future for irrigation, a modification to this permit would also be required.

A *Right to Divert and Use Water* was issued for the three (3) points of diversion by the State Water Resources Control Board (SWRCB; Registration No. H504738, Certificate No. H100939) in January 2019 (Attachment 4) for irrigation use, which limits the amount of water that may be diverted to 0.15 acre-feet (or 48,878 gallons) per year. The total storage capacity is also limited to 0.15 acre-feet (48,878 gallons). As such, Planning staff determined the water diversions alone are not sufficient to serve the proposed project, and is currently supplemented by use of the existing well.

As described above, the applicant is proposing to add rainwater catchment to the subject site, in addition to 20,000 gallons of additional water storage, and cease use of the well until the well is assessed for hydrologic connectivity. Use of the points of diversion would also continue. An assessment of the rainwater catchment potential of the proposed rainwater catchment system was completed to determine if adequate water supply would be available to serve the project. The average rainfall for the project area is 81.19 inches, based on averaging rainfall values from 2010 through 2020 as recorded by PRISM Climate Group. Impermeable surfaces such as roofs, driveways, etc. in general allow for about 620 gallons of rainwater catchment per 1,000 SF for every inch of rainfall or 0.62 gallons per 1 SF. Based on information provided by the applicant's agent in September 2022 (Attachment 4), the applicant plans to add and collect rainwater from the gutters of the two-story ag barn with a footprint of approximately 2,688 SF (32'X84'). As described by the agent (Attachment 4), rainwater from the roof of the ag barn will be captured in the proposed catchment tanks (four 5,000-gallon), to be located adjacent to the barn, then will be pumped up to Water Storage Area #4 (as indicated on the Site Plan), as Areas #2 and 3, as needed.

Based on the impermeable rainwater catchment area of 2,688 SF, and an average rainfall amount of 81.19 inches, the site's potential capture amount totals 135,308 gallons per year, on average. Use of the points of diversion will also continue under the project. As such, when compared to the estimated annual water usage amount (164,100 gallons), Planning staff believes there will be sufficient water supply available from the rainwater catchment system, once installed, and the points of diversion to serve the project. Planning staff calculated there would be sufficient water supply available for the project, even during lower rainfall years (up to approximately 85.2% of the average rainfall amount of 81.19 inches, or approximately 69.17 inches of rainfall).

Please note that even with the additional 20,000 gallons of water storage proposed, total onsite water storage (102,350 gallons) will be below the total amount of water required annually for the project (164,100 gallons) by 61,750 gallons. To ensure sufficient water is available to serve the project, conditions of approval require an additional 61,750 gallons of water storage (in addition to the 20,000 gallons already proposed for the rainwater catchment system), at a minimum, for a total of 81,750 gallons, to be added onsite in a previously disturbed area without the use of heavy machinery, and shall be filled prior to the 2023 cultivation season (**Condition of Approval A.10**). The Cultivation and Operations Plan and Site Plan shall also be revised accordingly (**Conditions of Approval A.6-7**). As previously described, only up to 48,878 total gallons of onsite water storage may be filled by the point of diversions in accordance with the Right to Divert and Use Water (**Condition of Approval A.14**), which means, at a minimum, the other 115,222 gallons of water storage

required for the project must be derived from rainwater catchment. Conditions of approval also require the applicant to monitor water use from the points of diversion, the rainwater catchment system (once operational), and water storage tanks annually to demonstrate there is sufficient water available to meet operational needs and water is used as authorized (**Condition of Approval A.27**).

Should the applicant be unable to install the additional water storage tanks and/or catch the amount of water needed from the rainwater catchment system to meet the annual water demand (i.e., the additional water storage tanks are not filled) prior to the 2023 cultivation season, Planning staff recommends a condition of approval be added to require the applicant reduce their cultivation amount to 2,852 SF until such time the applicant can install the additional water storage tanks and demonstrate they are filled by the rainwater catchment system (**Condition of Approval A.10**). This cultivation amount equates to the amount of cultivation that can be supported during the forbearance period by the amount of water available within the water storage tanks supported by the points of diversion (48,878 gallons) and the applicant's average annual water usage (14.14 gal/SF).

A Final Streambed Alteration Agreement (SAA) was issued by the California Department of Fish and Wildlife (CDFW; Notification No. 1600-2017-0156-R1) in September 2017 (Attachment 4) for nine (9) encroachments, including two (2) points of diversion and seven (7) encroachments to upgrade undersized culvers, conduct maintenance on existing culverts, and for placement of rock armor. Work associated with the encroachments includes use and maintenance of the water diversion infrastructure, as well as excavation, culvert removal, culvert installation, backfilling and compaction of fill, and/or rock armoring as necessary to minimize erosion. Regarding the points of diversion, one (1) is noted to be a diversion from an ephemeral stream for domestic and irrigation, while the other is from a spring for domestic use only. Per the Final SAA, the applicant is required to forbear from May 15 to October 15 annually; however, the applicant is permitted to divert up to 150 gallons per day during this period for domestic use only. As such, all diversion associated with irrigation must occur during the rainy season, outside of the forbearance period. As three (3) points of diversion are currently utilized for the operation, the applicant shall submit a Notification of Lake or Streambed Alteration Agreement and obtain a Final SAA from CDFW for the third point of diversion and/or revise the current SAA as applicable for the additional point of diversion utilized and for the point of diversion currently noted to only be utilized for domestic use only (POD 3), and adhere to all terms and conditions (**Condition of Approval A.16**).

Conditions of approval require the applicant to implement all terms and conditions of the Right to Divert and Use Water (**Condition of Approval A.14**) and the Final SAA (**Condition of Approval A.15**). In addition, the applicant is required to limit the amount of water diverted and stored onsite to a maximum of 48,878 gallons, consistent with the appropriative right (**Condition of Approval A.14**). Conditions also require that the applicant separately meter different water sources and make that information available as requested (at minimum during the annual inspection) to demonstrate the applicant is utilizing water as authorized (**Condition of Approval A.28**). By adhering to the terms and conditions of these documents, which limit the diversion amount and duration in addition to the specifying the use of intake structures that will not impact aquatic species, Planning staff determined that impacts to the watershed are minimized allowing the use of the points of diversion pursuant to a Special Permit.

As depicted on the Site Plan with respective buffers, the project site contains several Class III watercourses and is directly adjacent to the Mattole River, a Class I waterway, which runs adjacent to the western boundary of the parcel. Although the SMA buffer for the Mattole River is not shown along the western property boundary, all cultivation and related infrastructure will occur outside of all required SMA buffers.

A Water Resources Protection Plan (WRPP; WDID 1B171719CHUM) was prepared by Timberland Resource

Consultants in September 2017 and revised in July 2018 (Attachment 4) for the subject site, pursuant to North Coast Regional Quality Control Board (NCRWQCB) Order No. R1-2015-0023. The WRPP identified twenty-three (23) places onsite requiring corrective actions, including: rock armor spillways, install erosion control measures, upgrade and maintain culverts, provide secondary containment for fuel tanks, regrading of roads to prevent discharge, and relocate all storage areas outside of the SMA. The project is conditioned to implement all remaining corrective actions detailed in the WRPP (**Condition of Approval A.17**). Conditions of approval also require the applicant to comply with the State Water Resources Control Board (SWRCB) Cannabis Cultivation Policy, which includes development of a Site Management Plan (**Condition of Approval A.18**).

Biological Resources: Per review of CDFW's California Natural Diversity Database (CNDDDB) in October 2021, the Mattole River, which makes up the western edge of the parcel, is habitat for summer-run steelhead (*Oncorhynchus mykiss*) and the nearest NSO activity center is located approximately 2.55 miles from the cultivation area, with the nearest NSO sighting located approximately 2.11 miles away. Per the Cultivation and Operations Plan (Attachment 1), power is provided by Pacific Gas and Electric Company (PG&E). The project is conditioned implement noise and light attenuation measures, including ensure the combination of background, generator and greenhouse fan, or other operational equipment created noise, meets the noise level threshold of a maximum of 50 decibels at the property line (**Condition of Approval A.23**), and lighting complies with International Dark Sky Association standards (**Condition of Approval A.24**). Additional conditions of approval require the applicant to refrain from using synthetic netting, ensure refuse is contained in wildlife proof storage, and refrain from using anticoagulant rodenticides to further protect wildlife (**Conditions of Approval A.24-25 and Ongoing Conditions of Approval B.1-7**). 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.

Based on review of the Site Plan, it appears that a small portion of the area shown as "graded flat/disturbed area" in the southeastern portion of the property is within a required Streamside Management Area (SMA) buffer. As such, a qualified professional (i.e., professional biologist) shall assess the disturbed area located within the SMA buffer and prepare a Remediation Plan to be implemented by the applicant, as necessary, to mitigate for any impacts to the SMA (**Condition of Approval A.8**).

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 Cape Mendocino Planning Watershed, which under Resolution 18-43 is limited to 650 permits and 223 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 227 permits and the total approved acres would be 79.4 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 3 for more information).

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 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.
2. 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.

ATTACHMENTS:

1. Draft 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. Right to Divert and Use Water
 - B. Water Resource Protection Plan
 - C. Final Streambed Alteration Agreement
 - D. Road Evaluation Report for Dutyville Road
5. Referral Agency Comments and Recommendations
 - A. Public Works, Land Use Division Response
 - B. CAL FIRE Response
 - C. California Department of Fish & Wildlife Staff Request for Comments

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Please contact Megan Marruffo, Assigned Planner, at 707-443-5054 or by email at marruffom@lacoassociates.com, if you have any questions about the scheduled public hearing item.

