

**Boden Wood**

Record Number: PLN-2018-15218  
Assessor's Parcel Number: 222-071-023

**Recommended Planning Commission Action**

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

*1) Find that the Planning Commission has considered the Addendum to the adopted EIR for the Commercial Cannabis Land Use Ordinance (CCLUO) as described by Section § 15164 of the State CEQA Guidelines; 2) make all of the required findings for approval of the Special Permits; 3) and approve the Boden Wood, Special Permits as recommended by staff subject to the recommended conditions.*

**Executive Summary:** Boden Wood seeks a Special Permit to allow for 43,000 square feet of cannabis cultivation whereas 21,740 square feet is existing cultivation, and 21,260 square feet is new cultivation in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, Commercial Cannabis Land Use Ordinance (CCLUO). The site is designated as Residential Agriculture (RA40). Cultivation will take place in the following cultivation areas:

<b>Cultivation Area</b>	<b>Structures in Nexus to Cannabis</b>	<b>Size (sq ft)</b>
Cultivation Area A	Open-air garden	4,505 sf
Cultivation Area B	Open-air garden	25,285 sf
Cultivation Area C	Five (5) Greenhouses	13,665 sf
Propagation	One (1) Greenhouse	4,200 sf
Processing (Drying)	One (1) Existing Structure	700 sf
Processing	One (1) Proposed Structure	1,800 sf

The applicant is proposing to relocate one existing 3,570 square foot outdoor cultivation site to a new area on the property below 15% slope, in conjunction with the proposed new cultivation. An environmental justification and restoration plan have been submitted and included as attachments.

Artificial lighting used for ancillary propagation nursery, and processing will adhere to shielding and International Dark Sky Association standards as set forth in the CCLUO. Processing such as drying and curing will take place in an existing 700-square-foot building. Further processing will occur off-site at a licensed processing facility. The applicant is proposing to build an 1,800 square foot processing building constructed to commercial standards. The applicant anticipates hiring a maximum of 6 employees to assist with operations. Power for the project will be provided by solar with a backup generator for emergency purposes. The applicant submitted a 24-Hour Noise Assessment prepared by KnB Corporation dated April 28, 2021 (see Attachment 3). The survey was conducted by leaving a sound level meter at the Eastern, Southern, and Northern property lines. According to the assessment the meters recorded ambient sound without interruption for a period of 24-hours. The average noise level recorded from property lines was 54.6 decibels. The average general noise came from wind.

**Water Resources**

Water for the project will be sourced from a 538,560-gallon rainwater catchment pond. Water storage for the project occurs in the following:

<b>Water Storage in Nexus to Cannabis</b>	
<b>Water Storage</b>	<b>Size (gal)</b>
Water Storage Tank	5,000 gal
Water Storage Tank	3,200 gal
Water Storage Tank	3,200 gal
Fertilizer Tank	500 gal
Pond	538,560 gal

The applicant anticipates 321,135 gallons of water will be required annually for irrigation for two cultivation cycles.

**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 295 permits and the total approved acres would be 80.96 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).

**Seismic Safety**

The subject parcel contains mapped instances of historic landslides in and around the parcel, including one occurrence mapped on an existing cultivation area. The parcel is classified a "moderate instability" area per the General Plan. as such County staff recommends a condition of approval for the preparation and submittal of an R-2 Soils Report and the implementation of all recommended measures in the report to be completed prior to commencing cultivation activities. While the site contains a pre-existing cultivation operation, the project has not been approved for an Interim Permit and the site has not been actively cultivated since 2018. Adherence to recommendations from an engineering geotechnical report (R-2) will ensure that the cultivation activities do not contribute to or exacerbate landslides or slope instability.

Pre-existing cultivation sites are located on slopes greater than 15% slope and less than 30%. The Site Management Plan prepared by ETA Humboldt states that in both pre-existing cultivation sites companion plants, native grasses, and indigenous plants grow in the area to control runoff, and no signs of wastewater runoff or erosion is present. Water lines are checked frequently for leaks or cracks. No further grading on the property is proposed or permitted in association with this cannabis permit.

**Access**

The property is accessed via private driveway from Sproul Creek Road. The applicant submitted a Road Evaluation Report stating that not all of the private road segments are presently developed to the equivalent of road category 4 or better. The project was referred to the Department of Public Works who commented all recommendations in Segment 2 and 3 shall be completed. Segment 4 shall also be completed up to the access point of the "Seeba Lane". The applicant shall also gravel the surface at the location of Sprowel Creek Road, where it meets the

private road for a minimum width of 20 feet and a length of 50 feet. The applicant submitted a *Site Management Plan (SMP)* prepared by ETA Humboldt, LLC dated January 18, 2019. According to the SMP, the project is classified as a Tier 1 Low Risk discharger (WDID: 1B171158CHUM). The SMP states the project is out of compliance with Vehicle Stream Crossings because there are three undersized culverts located within the first 500 feet of the private driveway. The project is conditioned for the applicant to implement and adhere to the recommendations regarding vehicle stream crossings found within the SMP (see Attachment 4). The project also has an ongoing condition to implement and adhere to all recommendations found within SMP.

### **Cultural Resources**

The project is located in the Bear River and Sinkyone Aboriginal Ancestral Territories. The project was referred to the Northwest Information Center, Bear River and Intertribal Sinkyone Wilderness Council. The applicant submitted a Cultural Resources Investigation prepared by William Rich and Associates dated January 2020. The investigation concluded there were no significant archaeological or historic-period cultural resources, which would be considered an historical resource for the purpose of CEQA (15064.5(a)), exist in the limits of the project area. The project has an ongoing condition to include inadvertent archaeological discovery language.

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 Environmental Impact Report that was certified for the Commercial Cannabis Land Use Ordinance and has prepared an addendum to this document for consideration by the Planning Commission (See Attachment 2 for more information).

### **Biological Resources**

According to the California Natural Diversity Data Base (CNDDDB) there are no mapped rare and endangered species located on the parcel. The nearest Northern Spotted Owl Activity Center (MEN0458) is mapped approximately 0.43-miles south from the project site. The nearest NSO observation is mapped approximately 500 feet south from the project site. Marbled Murrelet habitat is mapped approximately 0.79-miles northeast from the project site.

The applicant submitted a Biological Assessment prepared by Nor Cal Bio Surveys dated February 26, 2020. In June of 2021, California Department of Fish and Wildlife commented on the project, requesting that the project be removed from the Planning Commission agenda and be placed before the Planning Commission due to concerns regarding potential adverse impacts to the northern spotted owl (NSO). In response, Planning Department staff removed the project from the agenda pending further information determining the impacts to northern spotted owl.

The applicant submitted a report evaluating potential adverse impacts to marbled murrelets and NSO, prepared by Troy Leopardo dated October 18, 2021 with a resume attached. The submitted report concluded that the habitat associated with this project lacks suitable nesting habitat and expanding cannabis cultivation is unlikely to have adverse impacts on NSOs.

The applicant submitted a new Biological Resource Assessment and Botanical Survey prepared by Austin Theriault of ETA Humboldt dated December 28, 2021. The report analyzed thirteen sensitive species that had potential to occur on the subject parcel based on inclusion in the CNDDDB database for the area and surrounding quadrangles. The report found that habitat for sensitive species occurred onsite, although no visual identifications were made on field surveys, and no habitat modification will result from project execution as proposed.

The report also addressed biologist conducted in-season floristic surveys. Field surveys were completed April 21<sup>st</sup>, 2021 and July 1<sup>st</sup>, 2021, and no sensitive plant species were identified on

either botanical survey. The report recommends a qualified biologist assess the project areas prior to construction to confirm the presence/absence of sensitive or protected plant or animal species. The pre-construction survey shall consist of a site visit by a qualified individual familiar with the botanical and biological setting and characteristics of the Humboldt County area. Pre-construction surveys shall take place 1-2 weeks prior to any ground disturbance. This recommendation has been included as a condition of approval.

The applicant also submitted a report evaluating potential adverse impacts to marbled murrelets and NSO, prepared by Troy Leopardo dated October 18, 2021 with a resume attached. The submitted report concluded that the habitat associated with this project lacks suitable nesting habitat and expanding cannabis cultivation is unlikely to have adverse impacts on NSOs.

### **April Planning Commission Meeting**

The project was heard on April 21, 2022 and comments from the public indicated that there was a question of whether there was any habitat for NSO in the project location and whether the proposed project would negatively impact Northern Spotted Owl and its habitat. Planning staff presented the project and identified that the report from the NSO expert had indicated that the project location was not considered habitat. The comments at the hearing led to some question about whether this was actually the case and the Planning Commission continued the hearing to allow for additional information to be submitted or clarified. Further clarification from Troy Leopardo is quoted below, with the email included as an attachment:

“Although there are historical NSO detections within 1.3 miles of this project site, located in a large natural opening, this locality was not classified as habitat due to the absence of trees. Reviewing the site, and the areas adjacent, I have concluded that no spotted owl nesting, roosting, or foraging habitat will be removed as a result of this project. Furthermore, given measures to mitigate noise disturbance and light pollution, this proposed cannabis cultivation is unlikely to impact any existing NSO that may be located on adjacent parcels, or within 1.3 miles of proposed new cultivation in existing grassland areas.”

### **NSO Mitigation Measures in the EIR**

It's important to understand that the EIR for the CCLUO requires different standards for existing and new cannabis cultivation. Specifically, pre-existing cannabis may be allowed within NSO habitat or in proximity to NSO activity centers provided it is demonstrated by a qualified expert to not result in harassment of the species. If new cannabis cultivation is proposed within suitable NSO habitat and within 1.3 miles of a known occurrence of NSO, it may not be allowed as it is presumed that habitat removal would constitute a significant impact on the species.

The specific mitigation measures for Northern Spotted Owls in the EIR reads as follows:

“The following shall be included as performance standards in the proposed ordinance for the protection of northern spotted owl from permitted cannabis activities.

- To avoid the potential for loss of northern spotted owl and their nests, or loss or fragmentation of occupied or suitable habitat for northern spotted owl, removal of old growth habitat shall be prohibited, as outlined in Mitigation Measure 3.4-3, Sensitive natural communities, riparian habitat, old growth habitat, and wetland vegetation.
- If the area of proposed new development activities is within suitable habitat for northern spotted owl (e.g., coniferous forest), and is within 1.3 miles (average species home range) of a known occurrence of northern spotted owl, as determined by a qualified biologist, the following measures shall be followed.

- Prior to removal of any trees, or ground-disturbing activities adjacent or within suitable nesting, roosting, or foraging habitat (e.g., forest clearings) for spotted owl, a qualified biologist, familiar with the life history of the northern spotted owl, shall conduct preconstruction surveys for nests within a 1.3-mile buffer around the site as described in *Protocol for Surveying Proposed Management Activities that May Impact Northern Spotted Owls* (USFWS 2012). Surveys shall take place between March 1 and August 31. Three complete surveys spaced at least 7 days apart must be completed by June 30. Six complete surveys over the course of 2 years must be completed to determine presence or absence of northern spotted owl.
- If northern spotted owls are determined to be absent 1.3 miles from the site, then further mitigation is not required.
- If northern spotted owls are determined to be present within 1.3 miles of the site, then it is presumed that habitat removal could cause harm to northern spotted owl populations in the area, and could result in direct take of northern spotted owls. If northern spotted owls are present within 1.3 miles of the site, proposed cultivation activities will not be permitted consistent with the General Requirement and Prohibition 4 of the Attachment A of the State Water Board Policy.
- For pre-existing cultivation sites that submitted for permitting prior to December 31, 2019 within 0.7 miles of a known northern spotted owl activity center, a qualified biologist, familiar with the life history of the northern spotted owl, shall conduct a disturbance and habitat modification assessment to determine the presence of the species and whether the cultivation site can operate or have its operation modified to avoid take of the species. If it is determined that take of the species could occur, the cultivation site will be required to participate in the Retirement, Remediation, and Relocation provisions of the proposed ordinance to relocate the cannabis cultivation to outside of the northern spotted owl activity area. Pre-existing cultivation sites that submit for permitting after December 31, 2019 will be subject to the new development provisions of this mitigation measure"

#### Proposed Pre-existing Cannabis Cultivation

The application includes a request for approval of 21,740 square feet of existing cultivation within 0.7 miles of an NSO activity center. Pre-existing cultivation within 0.7 miles of a northern spotted owl activity center requires a disturbance and habitat modification assessment prepared by a qualified biologist to determine the presence of the species and whether the cultivation site can operate or modify operations to avoid take of northern spotted owls. The applicant submitted a northern spotted owl and marbled murrelet assessment prepared by Troy Leopardo, who is a qualified NSO biologist, which found that the project as proposed would not result in take of the species, stating "... given the lack of detections in the area, it is reasonable to conclude that the proposed cannabis cultivation would not impact NSOs in a manner that violated State or Federal law".

#### Proposed New Cultivation

The application includes a request for approval of 21,260 square feet of new cultivation within 1.3 miles of a known NSO occurrence. The proposed new cultivation is required to complete two-year protocol level preconstruction surveys if two criteria are both applicable. These criteria include new development activities proposed both within suitable habitat for northern spotted owl, and within 1.3 miles of a known occurrence of northern spotted owl. While the proposed new development is within 1.3 miles of a known occurrence of northern spotted owl, it is not within suitable habitat as determined by Troy Leopardo, who stated in a clarifying communication that "Reviewing the site, and the areas adjacent, I have concluded that no spotted owl nesting, roosting, or foraging habitat will be removed as a result of this project". Further surveys to determine presence is not required as 1) for the purposes of this requirement the County is

assuming that there is presence within 1.3 miles and 2) the activity does not appear to be proposed within habitat per a qualified NSO biologist. The assumption of presence is the preferred method of considering and addressing NSO impacts as excessive NSO surveys can themselves constitute harassment.

**Alternatives**

Several alternatives may be considered: 1) The Planning Commission could elect to add or delete conditions of approval; 2) The Planning Commission could deny approval of the requested permit if unable to make all of the required findings; 3) The Planning Commission could elect to approve only the existing cultivation if they find that the proposed new cultivation would be located in NSO habitat.