

**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:

*Find that the Commission has considered the Addendum to the adopted Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance (CCMLUO) as described by Section §15164 of the State CEQA Guidelines, make all of the required findings for approval of the Conditional Use Permit and Special Permit and adopt the Resolution approving the Elders Road, LLC, project as recommended by staff subject to the recommended conditions.*

**Executive Summary:** Elders Road, LLC, seeks a Conditional Use Permit to allow the continued cultivation of 17,755 square feet (SF) of outdoor cannabis and 1,775 SF of proposed ancillary propagation 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). A Special Permit is also requested for development within the Streamside Management Area (SMA) for continued use and maintenance of a point of diversion. The site is designated as Rural Community Center (RCC) in the Humboldt County 2017 General Plan Update and zoned Forestry Recreation with a 5-acre minimum special building site combining zone (FR-B-5(5)). Cultivation takes place in the southern and eastern portions of the site and includes 4,429 SF of full-sun outdoor cultivation and 13,326 SF of outdoor cultivation that is cultivated using light deprivation techniques within fourteen (14) greenhouses. A maximum of 1,775 SF of ancillary propagation is proposed onsite within two (2) areas. Per the Cultivation and Operations Plan (Attachment 3), the applicant proposes to use an indoor propagation area for mother plants and propagation of clones, which will occur in the 600 SF (20'x30') drying and curing structure, during winter and early spring until weather permits the clones to be moved into the proposed 1,775 SF outdoor nursery greenhouse. The two (2) propagation areas will not operate simultaneously. Artificial lighting will be used to support the propagation area. One harvest is anticipated annually in the full-sun outdoor areas and up to two harvests for the light deprivation greenhouses for a growing season that extends from February through October.

Drying, curing, and bucking occurs onsite within a 600 SF building. All other processing currently occurring off-site at a licensed processing or manufacturing facility; however, onsite processing is anticipated in the future. A maximum of three (3) employees will be onsite during peak operations. Power is provided by Pacific Gas and Electric Company (PG&E), with two (2) 3,000-watt generators utilized for backup power only. The operation is secured behind a gated access and privacy fence, and utilizes restricted access signs, security lighting, security cameras, and motion alarms.

**Onsite Cultivation and Nursery Space**

As previously discussed, the applicant is requesting 17,755 SF of outdoor cultivation, in addition to 1,775 SF of ancillary propagation. With the ancillary propagation space included, there is a total of 19,530 SF of onsite cultivation; however, based on the County's cultivation area verification, only 17,755 SF was in existence prior to the CMMLUO environmental baseline date of January 1, 2016. The proposed cultivation space equates to 10% of the cultivation area, which is what Planning staff and the Planning Commission have found allowable in the past. Although the parcel is more than 5 acres in size, cultivation occurs on slopes greater than 15%, a diversionary water source is utilized, and the subject site is not zoned RA, U, FP, DF, AG, or AE, and, as a result, new cultivation cannot be considered on the subject area and the total cultivation area (including the nursery space) is limited to 17,755 SF. As a result, recommended conditions of approval are included to reduce the cultivation areas to a maximum of 15,980 SF of cultivation, to include the proposed nursery space of 1,775 SF, for a total of 17,755 of onsite cultivation (**Conditions of Approval #5 and #6**).

### Onsite Relocation

As depicted on the 2019 Site Plan, relocation of five (5) canopy areas [2 full-sun outdoor areas (labeled as "A" and "D" on the Site Plan) and 3 existing greenhouses (labeled as "7", "8", and "9"), respectively] was previously proposed, with the relocated areas to be reconfigured into greenhouses and relocated north and northeast of their prior locations, from an existing open area to another open area. In addition, the 2019 Site Plan indicated that an existing greenhouse (labeled as "1" on the Site Plan) and shed (8'x12') were located within the 30-foot setback from the western property line.

An updated Site Plan, dated August 2020, indicates the relocation and reconfiguration has occurred. Per review of aerial imagery, it appears the reconfigured greenhouses were added between 2016 and 2018. Based on information provided by the applicant's agent in February 2022 (Attachment 3), the prior cultivation areas were located within the SMA and have been relocated to a pre-existing flat onsite (labeled "Ag Exempt 6-13" on the updated Site Plan), with the former area restored. A condition of approval requires the applicant to remove any remaining cultivation-related infrastructure from the former cultivation areas and submit evidence (e.g., photographs, a letter from a qualified professional, etc.) verifying the removal has occurred (**Condition of Approval #7**).

### Cultivation Setbacks

The Site Plan shows that four (4) existing 5,000-gallon water tanks are currently located within the 30-foot setback from the western property line. Conditions of approval require these tanks to be relocated outside of the required setback to a previously disturbed area without the use of heavy equipment (**Condition of Approval #8**).

### Timber Conversion

A Timber Conversion Report (*Trevor Eldridge Less Than Three Acre Conversion Mitigation Plan*) was prepared by Hohman and Associates Forestry Consultants (not dated; Attachment 3), which indicates the subject property comprises "a matrix of Douglas fir/oak forest and grassland" and that past harvesting has occurred onsite. Per the Report, approximately 1.51 acres of timber conversion occurred onsite to accommodate the project, which is below the three-acre conversion exemption maximum. It is noted in the Report that the initial conversion to create the cultivation areas occurred in 2005 and 2012, and no timber harvesting has occurred in or around the sites in the last ten (10) years. The Report makes note of specific locations that are currently in conflict with the Forest Practice Rules or have potential to cause environmental damage. Specifically, the Report recommends installing waterbars on a steep jeep road with 25%+ grade be installed every 50 to 75 feet, where applicable, at Road Point (RP) #3; draining surface drainage and install a rocked rolling dip at RP #1; clean the inlet and outlet at the existing 18-inch-diameter cross drain and rock line the ditch for 50 feet at RP #2; replace undersized culvert and rock road for 25 feet at RP #4; and drain surface drainage, install rocked rolling dip, and line/cap the dip with rock to divert surface silt and debris off the road prism at RP #7, 8, 10, 11, and 12; and install a culvert, clean inlet and outlet when needed, and line/cap the jeep trail with rock to the left and right of the culvert for 25 feet at RP #9. No additional tree removal is authorized under this permit.

Per comments received from the California Department of Forestry and Fire Protection (CAL FIRE) in November 2019, it was noted that CAL FIRE is supportive of the project, as long as the mitigation measures described in the Report are completed. The project is conditioned to implement any remaining corrective actions detailed in the Timber Conversion Report (**Condition of Approval #19**).

### Water Resources

Estimated annual water usage is 155,000 gallons (8.7 gal/SF) with peak demand occurring June through September at approximately 25,000 gallons per month, respectively, per the table below.

| Jan | Feb | Mar | Apr    | May    | Jun    | Jul    | Aug    | Sep    | Oct    | Nov    | Dec |
|-----|-----|-----|--------|--------|--------|--------|--------|--------|--------|--------|-----|
| 0   | 0   | 0   | 10,000 | 20,000 | 25,000 | 25,000 | 25,000 | 25,000 | 15,000 | 10,000 | 0   |

Total: 155,000 gallons

Water for irrigation is provided by a point of diversion from an unnamed Class II spring on the subject property. A *Right to Divert and Use Water* (Registration ID H508022; Certificate No. H100551) has been issued for use with the spring diversion by the State Water Resources Control Board (SWRCB) in July 2019 (Attachment 3). The *Right to Divert and Use Water* allows for 0.58 acre-feet (or 188,993.5 gallons) of water to be diverted from the unnamed spring that is a tributary to the Eel River, thence the Pacific Ocean, on an annual basis. Storage capacity cannot exceed 0.55 acre-feet (179,218 gallons). The total estimated annual water usage (155,000 gallons) is approximately 82.01% of the appropriated amount allowed under the water right. Existing available water storage is 60,000 gallons in twelve (12) hard-sided tanks, with an additional 90,000 gallons proposed in eighteen (18) additional 5,000-gallon tanks, for a total of 150,000 gallons of onsite water storage. This volume of storage is allowable as described in the appropriative right. To ensure sufficient volume is available to serve the project, a recommended condition of approval has been included to require an addition 5,000 gallons of water storage be added onsite, equal to the estimated annual water use (**Condition of Approval #9**). Additional conditions of approval require the applicant to continue to comply with the terms and conditions of the Right to Divert and Use Water (**Condition of Approval #17**) and to monitor water use from the spring diversion and water storage tanks annually to demonstrate there is sufficient water available to meet operational needs (**Condition of Approval #25**).

The applicant also seeks a Special Permit for development within the Streamside Management Area for continued use and maintenance of the registered point of diversion, as well as for relocation of an existing greenhouse and shed structure, currently located within the 30-foot setback from the western property line, outside of the required setback. A Notification of Lake or Streambed Alteration was submitted to the California Department of Fish and Wildlife (CDFW) for one (1) stream crossing upgrade, a point of diversion, and for site remediation. It is noted in the Notification that associated work may require an excavator, dump truck, tractor, and a grader; however, it is further noted that soil stabilization measures and best management practices (BMPs) would be implemented. The applicant is required to finalize the Streambed Alteration Agreement (SAA) notification submitted to CDFW, adhere to and implement the projects and recommendations contained in the Final SAA, and provide evidence to the Planning Department that the projects included in the Final SAA are completed to the satisfaction of CDFW (**Condition of Approval #16**). By adhering to the terms and conditions of the Right to Use and Divert Water, which limits the amount of water that can be diverted and the and the FSAA, which typically limits 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 point diversion pursuant to a Special Permit.

As depicted on the Site Plan with respective SMA buffers, two unnamed creeks traverse the southern and southwestern portions of the site, although not depicted on the County's GIS portal. As shown on the Site Plan, all cultivation-related infrastructure is located outside of the required SMA buffers.

A Water Resource Protection Plan (WRPP; WDID 1\_12CC401617) was prepared for the site by Six Rivers Construction and Consulting in September 2019 (Attachment 3), which details existing site conditions, how the property is or will meet the provisions and requirements of Order No. R1-2015-0023, and remediation efforts needed to bring the operation into compliance. As noted in the WRPP, the cultivation sites are located more than 100 feet from any watercourse and irrigation is performed at an agronomic rate, so as to not produce any runoff. The WRPP identifies five (5) treatment recommendations to further protect water quality and bring the project into compliance with required standards, including but not limited to: relocating water tanks currently located on unstable location; removing all trash the project site weekly, installing rolling dips and outsloping the road, covering the soil pile with plastic, and performing road upgrades, including processing the road. The project is conditioned to implement all remaining corrective actions detailed in the WRPP to minimize any potential impacts associated with the project and minimize runoff into nearby SMAs (**Condition of Approval #18**) and prepare and submit a Site Management Plan in compliance with the State Water Resources Control Board's (SWRCB) Cannabis Cultivation Policy (**Condition of Approval #20**).

## Biological Resources

Review of CDFW's California Natural Diversity Database (CNDDDB) occurred in January 2022. Although there is the potential for one mapped sensitive plant species, beaked tracyina (*Tracyina rostrata*), within the western portion of the subject property, this mapped potential habitat area is located outside of the cultivation areas. The nearest NSO positive sighting is located approximately 3.77 miles from the nearest cultivation area, with the nearest NSO activity center located approximately 4.18 miles away.

An Initial Biological Scoping Report was prepared by Hohman and Associates in February 2019 (attached) which considers the potentially occurring species and communities that could be affected by the project based on available spatial data and habitat requirements. A site visit was not conducted. Vegetation at the subject property is mapped primarily as grasslands, with Oregon white oak woodlands (*Quercus garryana*). The Report notes the project has the potential to impact the following: seven (7) bird species, four (4) reptile and amphibian species, four (4) fish species, and two (2) invertebrate species. Per the Report, it is noted that impacts to special-status fish, amphibians, and reptiles may be avoided by adhering to State and Regional Waterboard guidelines to minimize runoff from cultivation and observing required Streamside Management Area (SMA) buffer distances. Additionally, minimizing light pollution and adhering to International Dark Sky Association standards will minimize potential impacts on birds, bats, and other light-sensitive species, and minimizing noise pollution from generators is important for sensitive birds, bats, and other wildlife. Further, pre-construction surveys, including a bird survey, are also recommended if any construction or vegetation removal is planned, to avoid impacts to nesting birds, which has been included as an ongoing condition of approval in the event of any future development on the subject property (**Ongoing Condition of Approval #24**).

No additional construction is proposed under the project. As previously discussed, relocation of five (5) canopy areas [2 full-sun outdoor areas (labeled as "A" and "D" on the Site Plan) and 3 existing greenhouses (labeled as "7", "8", and "9"), respectively] were previously located on the subject property. Per review of aerial imagery and the Site Plan, it appears the relocated areas were reconfigured into greenhouses and relocated north and northeast of their prior locations, from an existing open area to another open area, between 2016 and 2018. A condition of approval requires the applicant to remove any remaining cultivation-related infrastructure from the former cultivation areas, if not yet already completed (**Condition of Approval #7**).

Power for the site is provided by PG&E, with two (2) generators utilized for emergency back-up. Artificial lighting will be used to support the propagation areas. The conditions of approval require the applicant to implement noise and light attenuation measures, 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 #21, #23, and #24, and Ongoing Conditions of Approval #1 and #2**). 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. Additionally, no project components are located within SMA buffers and the applicant is required to implement all remaining corrective actions detailed in the WRPP to minimize any potential impacts associated with the project and minimize runoff into nearby SMAs.

## Access

Access to the site is via a driveway off Alderpoint Road. Alderpoint Road is a Category 4 County-maintained roadway. Per referral comments received from the Department of Public Works, Land Use Division in October 2019, any existing or proposed driveways to serve as access for the proposed project that connect to a County-maintained road shall be improved to current standards for a commercial driveway, and, as a result, the driveway apron shall be paved for a minimum width of 18 feet and a length of 50 feet where it intersects the County road (Alderpoint Road). Additionally, all driveways and private road intersections onto the County road shall be maintained in accordance with County Code Section 341-1 (Sight Visibility Ordinance) and all fences and gates shall be relocated out of the County right of way. Conditions of approval require the applicant to make the required roadway improvements in accordance with Public Works' comments (**Conditions of Approval #13-#15**).

### **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 42.09 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 Permit (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.