

Recommended Planning 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 (MND) for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) as described by Section 15164 of the State California Environmental Quality Act (CEQA) Guidelines, 2) make all of the required findings for approval of the Conditional Use Permit and Special Permit and 3) approve the Humboldt GT, LLC, Conditional Use Permit and Special Permit as recommended by staff subject to the recommended conditions.

Executive Summary:

Humboldt GT, LLC, seeks a Conditional Use Permit for 9,978 square feet (SF) of existing cannabis cultivation area, which includes 9,078 SF of mixed-light cannabis cultivation area, using light deprivation techniques and supplemental lighting, and 900 SF of outdoor cultivation area, using light deprivation techniques with no artificial lighting in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, CMMLUO. The 40-acre parcel site is designated as Residential Agriculture (RA40) in the Humboldt County 2017 General Plan and zoned Forestry Recreation (FR-B-5[40]). A 1,190-SF nursery area is proposed adjacent to a proposed 2,400-SF drying and storage building, and this will be limited to 10% of the total cultivation amount (i.e., 998 SF) as a condition of approval (**COA #A9**). A Special Permit is also sought for an encroachment of a Streamside Management Area (SMA) for the maintenance of the spring and restoration and relocation of cultivation related materials out of wetland and streamside management areas. Relocation to three proposed greenhouses cited at an environmentally superior area is detailed in a Cultivation Relocation Plan prepared by SHN in 2020 (**Attachment 3b**). Further remediation includes decommissioning of two roads adjacent to a wetland and retirement of four water bladders from within an SMA. Two annual harvests are expected from the mixed-light greenhouses for a growing season that extends from April through November.

Electricity is currently sourced onsite by two Honda EU7000 generators. The applicant has applied for an electrical power drop from Pacific Gas and Electric Company and, regardless, will develop and implement an alternative renewable (i.e., solar, wind, micro-hydro) energy plan capable of meeting 80% of the annual energy demands of the project within 5 years of project approval (i.e., April 7, 2027) (**COA #A10**). Onsite wastewater treatment is managed via a permitted septic system with an existing residence. The residence and associated garage are within the SMA, approximately 3,000 feet from the cultivation area. A new 2,400-SF drying, processing, and storage building is proposed outside of the SMA on a flat area near to the road. The existing and proposed septic system(s) shall be permitted as a condition of approval (**COA #A11**). Portable restroom facilities and hand-washing stations will be placed near the cultivation sites. Drying and processing of harvested cannabis would occur in the 2,400-SF proposed drying shed, once approved and constructed. A locked gate is installed at the entrance to the parcel. Motion-sensor lighting, an alarm system, and security cameras at the entrance, residence, and proposed processing facility are proposed. Full-time occupancy of the parcel during the cultivation season will be maintained.

Water Resources

Irrigation water is sourced from rainwater catchment supplemented by a spring that is a registered point of diversion (Registration H507034, Certificate H100550). Rainwater catchment will be captured from the roof of the existing residence with a 5,000-gallon holding tank near the house that will be pumped to the existing tank farm. Using the roof of the 1,200-SF residence and average precipitation of 30 inches, the applicant could capture approximately 22,458 gallons per year. Once the proposed drying shed is built,

the applicant could capture an additional 44,856 gallons. The spring diversion can supply no more than 150,000 gallons per year according to the Right to Divert and Use Water. The applicant has submitted an application for a groundwater well to supplement domestic water use until they have fully built out their tank farm; however, this well will not be used for irrigation unless a geologist can evaluate the well and attest that it is reasonably certain to not be hydrologically connected to subsurface flows of surface waters as a condition of approval (**COA #A12**). Total existing water storage is 136,750 gallons, consisting of 80,000 gallons in four water bladders and 56,750 gallons in 15 high-density polyethylene (HDPE) tanks. Four water bladders are located within SMA setbacks and these will be retired, removed, and replaced with hard tank storage outside any SMA within 3 years of project approval (**COA #A13**).

An estimated 168,000 gallons of water are needed annually for irrigation (16.8 gallons/SF/year) for a growing season extending from April to November. As such, a minimum of 30,000 gallons more storage in six HDPE tanks is proposed to bring total storage to approximate annual requirements. Cultivation amounts will be limited by the amount of water stored during the non-forbearance and rainwater catchment seasons and all water sources will be monitored and recorded as a condition of approval (**COAs #A14–15**). No water is diverted for cannabis irrigation during the November to March forbearance period according to the Cultivation Operations Plan (**Attachment 3a**).

Humboldt County's WebGIS shows one unnamed Class II watercourse west of the cultivation areas in the southwest area of the parcel, and the Van Duzen River is north of State Route (SR) 36. Cultivation sites are more than 150 feet from all known watercourses. A culvert stream crossing evaluation (on file) and a Wetland Delineation Report (**Attachment 5c**) were prepared for the site (and two adjoining parcels, APN: 210-191-050 and APN: 210-221-002) by SHN in 2019 and 2020, respectively. Following the U.S. Army Corps of Engineers (USACE) three-parameter guidelines, there is one wetland area and one ordinary high water mark found within the project area. There are two culverted ephemeral stream crossings within the property boundary, both of which are to be upgraded per the Site Management Plan (SMP) prepared by PR Professional Services in October 2021 (**Attachment 5d**). The SMP evaluated if the site met the best practicable treatment and control measures listed in Attachment A, Section 2 of the State Water Resources Control Board (SWRCB) Order WQ 2019-0001-DWQ. As a condition of approval, the applicant shall implement the recommended corrective measures detailed in Tables 2 through 12 of the SMP (**COA #A16**), pursuant to Tier 1 – High Risk enrollment under the SWRCB Cannabis Cultivation Policy.

The SMP described the property as containing multiple segments of unnamed class II watercourses, all tributaries to the Van Duzen River, a wetland feature that meets USACE's three parameters, and a spring diversion (S027099) that is utilized for cannabis irrigation and domestic use. There is a legacy access road that runs through the property that requires upgraded stream crossings to accommodate 100-year peak streamflow. Proposed improvements include upgrade of stream crossings 1 and 2; coordination with the adjacent property owner to upgrade culverts; decommissioning of a steep road segment and remediation as prescribed in the Lake or Streambed Alteration Agreement (LSAA) Notification; and decommissioning of the entire road and remediation as prescribed in the LSAA. The applicant is required to abide by the existing and any additional LSAA from the California Department of Fish and Wildlife (CDFW; 1600-2017-0908-R1R) as an ongoing condition of approval (**COA #B16**) and the applicant is required to transfer the above mentioned LSAA from the previous owner to the current owner (**COA #A16a**). The previous discharger enrolled the project as Tier 1 – Low Risk; however, due to water bladders and fuel tanks located in the riparian zone, the site should be classified as Tier 1 – High Risk. The discharger has been made aware of the issue and will work with the SWRCB to remediate the error. Maintaining enrollment in Tier 1 or 2 with North Coast Regional Water Quality Control Board Order is an ongoing condition of approval (**COA #B15**).

The project site is in the XX Planning Watershed, which under Resolution 18-43 is limited to 425 permits and 146 acres of cultivation. With the approval of this project, the total number of approved permits in this planning watershed would be 112, and the total approved acres of cultivation would be 39.15.

Biological Resources

A final Biological Resources Assessment (BRA) was prepared for the site by SHN in April 2021 (**Attachment 3e**), building upon the preliminary BRA prepared in May 2019. The BRA included protocol-level seasonally-appropriate botanical surveys conducted on May 20 and July 28, 2020, and an evaluation of potential impacts on wildlife, plants, and natural communities and recommendations to reduce potential impacts. California oat grass prairie (*Danthonia californica* Herbaceous Alliance) was observed in the adjacent grassland area, however it was not detected within the study area and the project is not expected to impact any Sensitive Natural Communities. The revegetation treatments and monitoring detailed in SHN's Cultivation Relocation memorandum are to be implemented and reports furnished to Planning and Building Department staff for approval as a condition of approval (**COA #A17**). In addition, the recommendations in the BRA for nesting bird surveys prior to construction is made a condition of approval (**COA #A18**).

The BRA query of the California Natural Diversity Database (CNDDDB) in 2021, showed observations of 11 of 56 potential special-status plants with a moderate or high potential to appear on the parcel. Similarly, 22 of 39 special-status animal species were determined to have a moderate to high potential to appear on the parcel. Habitat designated as critical for species listed under the FESA reported that the closest designated critical habitat is for the northern spotted owl (NSO) is 1.6 miles to the east of the study area. The nearest known historical NSO Activity Center is approximately 0.6 miles to the northeast (HUM0155). Project-related activities are not likely to impact this species or its habitat and the applicant, particularly as the applicant shall be required to avoid the NSO breeding season (March 15–July 31) when operating any heavy machinery which exceeds 50 decibels at the nearest forested habitat as a condition of approval (**COA #A19**). Because no forested habitat will be removed as part of the proposed project, disturbance is limited to noise associated with vehicles on the private access road to the parcel, intermittent use of small equipment for cultivation purposes, and generator noise associated with mixed-light cultivation. The generators will also meet noise requirements so as not to exceed 50 decibels from the property line and not to exceed the noise level threshold for NSO harassment of 50 decibels at 100 feet.

Appropriate facility setbacks from Class II and III watercourses on the parcel will be followed, and measures described in the SMP, Cultivations and Operations Plan, and LSAA to protect aquatic and upland resources will be adhered to. Furthermore, the project is conditioned to adhere to Dark Sky Association standards for security lighting, refrain from using synthetic netting, ensure refuse is contained in wildlife-proof storage, and refrain from using anticoagulant rodenticides to further protect wildlife (**COAs #B1–B7**). As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively affect NSO or other sensitive species.

Timberland Conversion

A timberland conversion report was prepared for the site by TRC in January 2019. The report evaluated potential timberland conversion on the site. In total, TRC observed approximately 0.11 acre of unauthorized timberland conversion for cultivation-related purposes within APN 210-221-001. This total does not exceed the 3-acre conversion exemption maximum. The report includes recommended measures for the converted areas such as removal of cultivation infrastructure from within the 100-foot riparian setback of Class II watercourses, landslide mitigation, and erosion control that are included as conditions of approval under the SMP requirements (**COA #A16**) and ongoing compliance with the LSAA.

Tribal Cultural Resource Coordination

The project was referred to the Bear River Band of the Rohnerville Rancheria and Northwest Information Center. The Tribal Historic Preservation Officer (THPO) Assistant of the Bear River Band of the Rohnerville Rancheria, in an email dated August 26, 2020, requested a survey for the project.

A cultural resources report was prepared for the project by DZC in December 2020. DZC contacted persons anticipated to be included on the list maintained by the Native American Heritage Commission on December 4, 2020, providing each with a project description, location map, a request to respond to

DZC with any relevant information, and a request to respond to the Lead Agency within 30 days, should the tribe wish to engage in formal government-to-government consultation. Email or hard-copy notifications were sent to contacts representing the Bear River Band of the Rohnerville Rancheria. On December 4, 2020 THPO Cooper of the Bear River Band of the Rohnerville Rancheria responded to DZC outreach. THPO Cooper did not provide any specific information for the area of potential effects (APE) but mentioned she looks forward to review of the report. As of December 4, 2020, a response has not been received from Chairperson Josefina Cortez, or Cultural Liaison, Edward Bowie of the Bear River Band of the Rohnerville Rancheria. One archaeological resource was determined to be within the APE and per the cultural resources report shall be avoided (**COA #A20**). Additionally, ongoing conditions of approval are incorporated regarding the Inadvertent Discoveries Protocol to protect cultural resources and tribal cultural resources.

Access

The parcel known as 41850 State Highway 36 (APN: 210-221-001) is accessed from SR 36 approximately 1.5 miles east from the intersection of Burr Valley Road and SR 36, then southeast on a private road for approximately 0.2 mile. Two Road Evaluation Reports were prepared for the project. The first Road Evaluation Report was prepared by the applicant's consultant and concluded that SR 36 is developed to a Category 4 road standard. The second Road Evaluation Report was prepared for the 0.19 miles of private access road by the applicant (**Attachment 5f**). The report concluded that the access road, a private driveway, is developed to the equivalent of a Category 4 road standards. This report includes photographs (Attachment 3) showing that the access drive is in good condition. SR 36 is maintained by the California Department of Transportation. The property has met all access requirements for emergency vehicles, including a fire turn-around and pull-out area.

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 MND that was adopted for the CMMLUO 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 and Building Department reference sources and comments from all involved referral agencies, Planning staff believe that the applicant has submitted evidence in support of making all of the required findings for approval of the Conditional Use Permit and Special Permit.

ALTERNATIVES: The Planning Commission could elect not to approve the project, 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 have stated that the required findings in support of the proposal have been made. Consequently, Planning staff do 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 Planning and Building 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 2 months later to give staff the time to complete further environmental review.