

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:

Find that the Commission has considered the Addendum to the adopted Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) 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 Vasi Ray Farms, LLC, project as recommended by staff subject to the recommended conditions.

Executive Summary: Vasi Ray Farms, LLC, seeks a Conditional Use Permit to allow the continued cultivation of 15,900 square feet (SF) of existing cultivation of which 11,400 SF is mixed light and 4,500 SF is outdoor utilizing light deprivation techniques 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 relocation of an existing greenhouse located within a Streamside Management Area (SMA) outside of the riparian buffer. The site is designated as Residential Agriculture (RA40) in the Humboldt County 2017 General Plan Update and zoned Forestry Recreation with a 40-acre minimum special building site combining zone (FR-B-5)40)). Cultivation takes place within the northern and central portions of the property within three (3) mixed light greenhouses (two 3,600 SF and one 4,200 SF; northernmost greenhouses), with outdoor cultivation occurring in two (2) greenhouses (2,700 and 1,800 SF). Ancillary propagation is proposed within a separate 1,440 SF (20'x72') greenhouse. Two (2) harvests are anticipated annually for a growing season that extends from January through October.

Drying and curing occurs onsite within the existing residence, with all other processing occurring offsite at a licensed processing or manufacturing facility. A maximum of four (4) people may be onsite during peak operations, who live onsite. Power is provided by three (3) generators. At this time, there are no long-term plans to switch to grid or solar power, as it is cost prohibitive. The operation is secured behind locked gates, with someone typically onsite at all times.

Timber Conversion

Review of aerial imagery dating back to 2004 indicates the site contained several open areas; however, it does appear timber conversion has occurred on the subject parcel in order to accommodate the cultivation infrastructure and rainwater catchment pond. A Less Than Three Acre Mitigation Plan was prepared by Stephen Hohman, a Registered Professional Forester (RPF), in January 2018, to assess the timber conversion that occurred onsite and provide recommendations regarding remedial actions necessary to bring the conversion area into compliance with the provisions of the Forest Practice Act. As noted in the Report, 2.4 acres of land has been converted on the property, occurring pre-2005, 2013, and 2015, with expansions occurring in 2014 and 2017. Three sites (referred to as Sites A, C and D) in the Report were originally converted in 2015 and 2013, respectively, and Sites C and D were expanded in 2017. However, the Report does not specify the amount of expansion that occurred after January 1, 2016, the CMMLUO environmental baseline date.

As described in the project's Cultivation and Operations Plan (Attachment 3) and as depicted on the Site Plan, an approximately 4,500 SF historic cultivation area in the western/central portion of the subject parcel has been decommissioned and relocated to an existing open clearing, approximately 400 feet of the former location and adjacent to the southern corner of one of the onsite residences. The historic cultivation site was previously located on unstable ground, surrounded by forested hillsides, with slopes in excess of 25%. Two conversion areas (referred to as Sites C and D in the Report) are also noted to have

occurred within Class II and Class III riparian buffers, with a greenhouse observed within a Class II riparian buffer. The report states the greenhouse located within the Class II buffer will be relocated away from the buffer to meet State and local setback requirements.

Numerous recommendations are included in the Report, including but not limited to draining surface drainage, installing rocked rolling dips, sloping road prism toward catchment pond to divert surface silt and debris off the road, and replacing undersized culverts. As the timber conversion that occurred onsite occurred prior to the CMMLUO baseline date, no restocking is required. No additional tree removal is proposed or authorized by this permit. A condition of approval has been included to require the applicant implement any remaining corrective actions identified the Report.

Review of aerial imagery indicates that additional tree removal and land clearing has occurred onsite after 2016. Per comments received from the California Department of Forestry and Fire Protection (CAL FIRE) in June 2018, it is noted that “the landowner’s proposal of mitigation prepared by an RPF regarding the four illegal conversions appears appropriate, but is in violation of the Forest Practice Rules.” While CAL FIRE noted the mitigation offered is acceptable and appropriate, CAL FIRE does not support the project areas expanded in 2017. As discussed above, Planning staff recommends that the project only be approved for the cultivation amount verified to in existence prior to the CMMLUO environmental baseline date of January 1, 2016, by the County (15,900 SF, including 11,400 SF of mixed light and 4,500 SF of outdoor cultivation, equal to what is requested under the permit).

The project is conditioned to require the property be evaluated to determine the amount of timber conversion that occurred prior to and after the CMMLUO baseline date of January 1, 2016, and any measures determined to be necessary by the RPF to mitigate for the unauthorized timber conversion shall be implemented. The applicant/owner will be responsible for mitigating the environmental impacts not analyzed in the environmental document prepared for the CMMLUO. Additionally, the applicant/owner shall be required to re-stock an area onsite equivalent to the amount of area converted after the CMMLUO baseline date a rate of 3:1. The report shall include monitoring and reporting requiring a minimum of 3 years of monitoring at an 85% success rate and submission of annual monitoring reports at the time of the annual inspection. Planning staff emailed CAL FIRE to notify them that the additional condition will be added to the project (see Attachment 4).

Water Resources

Estimated annual water usage is 112,000 gallons (7.04 gal/SF) with peak demand occurring in August at approximately 26,000 gallons, per the table below.

	<i>Cultivation – 15,900 ft²</i>	
<i>April</i>	<i>2,000</i>	<i>seedling</i>
<i>May</i>	<i>8,000</i>	<i>veg</i>
<i>June</i>	<i>17,000</i>	<i>veg</i>
<i>July</i>	<i>24,000</i>	<i>veg/flwr</i>
<i>August</i>	<i>26,000</i>	<i>flwr/veg</i>
<i>September</i>	<i>20,000</i>	<i>veg</i>
<i>October</i>	<i>15,000</i>	<i>flwr</i>

Total: 112,000 gallons

Water for irrigation is provided by rainwater catchment. The site contains an existing 600,000-gallon rainwater catchment pond and 23,000 gallons of hard-sided tank storage, for a total of 623,000 gallons of onsite water storage. A groundwater well and spring diversion provides water for domestic use; however, use of these water sources for irrigation use is not permitted under this permit. Conditions of

approval require the applicant to monitor water use from the pond and water storage tanks annually to demonstrate there is sufficient water available to meet operational needs.

According to Humboldt County Web GIS and depicted on the Site Plan with respective Streamside Management Area (SMA) buffer, an unnamed stream traverses the northern portion of the subject parcel. As shown on the Site Plan, all cultivation activities and respective infrastructure would be located outside of the required SMA buffer; however, the County's WebGIS depicts a much larger SMA buffer, which includes a portion of three existing greenhouses and outbuildings. As discussed above, it is noted in the Less Than Three Acre Mitigation Plan that the property contains several Class III watercourses. While two conversions areas are noted to be within a Class III riparian buffer, they do not contain any structures. However, a greenhouse was observed to be approximately 63 feet from the watercourse and approximately 12 feet within the riparian buffer, with a 40% slope between the two features. It is noted in the Report that the applicant is planning to relocate the greenhouse. A condition of approval is included to require the applicant relocate this greenhouse outside of the Class II riparian buffer without the use of heavy equipment to a previously disturbed area.

Referral comments received from the U.S. Army Corps of Engineers, dated June 2018, recommended the project be designed to avoid all impacts to jurisdictional waters of the United States, including South Fork Salmon Creek and its tributary, and any adjacent wetlands that may be present, and requested a wetland delineation be completed for the project. A Wetland Delineation was performed by Kyle S. Wear, botanical consultant, in June 2019 (Attachment 3), which includes a map of the Class II watercourse within the northern portion of the parcel with respective SMA buffer. This map depicts all cultivation-related infrastructure as outside of the required 50-foot SMA buffer. As noted in the Report, a 0.13-acre wetland was identified on the subject property, below the pond overflow, to the east of the pond, contains hydric vegetation, hydric soils, and standing water. It is further noted that the pond appears incidental to the pond and cultivation area, with water present due to the pond leaking and water running into the wetland from the irrigation system associated with the adjacent cultivation area. As the wetland was likely created from the leaking pond, the wetland is not considered Waters of the United States. It is further noted that "the wetland would likely not persist if the pond does not continue to leak." No portion of the project would encroach upon the identified wetland.

A Water Resource Protection Plan (WRPP; WDID 1B164984CHUM) was prepared by Timberland Resource Consultants for the subject site in October 2018 (Attachment 3) in compliance with the North Coast Regional Water Quality Control Board (NCRWQCB) Order No. R1-2015-0023. The WRPP assesses compliance with the required elements and standard conditions established in the Order to protect water quality from cannabis cultivation and related activities. Included in the WRPP is a prioritized list of the recommended treatments and actions to be implemented to meet the requirements of the Order. Specifically, numerous items were identified requiring remediation, including but not limited to upgrading existing culverts and rock armoring the inlet and outlet, installing rolling dips, covering and installing secondary containment on fuel tank, installation of erosion control measures, installing a waterbar, and removing refuse from riparian area. The project is conditioned to require the applicant to implement all remaining corrective actions contained in the WRPP. Additional conditions of approval require the applicant to comply with the State Water Resources Control Board Cannabis Cultivation Policy, which includes development and implementation of a Site Management Plan.

A Final Streambed Alteration Agreement (SAA; Notification No. 1600-2017-0894-R1) was issued by the California Department of Fish and Wildlife (CDFW) in June 2018 (Attachment 3) for five (5) encroachments, including use of the well and spring diversion (domestic use only), as well as for maintenance of a culvert within a Class III watercourse and use, maintenance, and diversion from two (2) ponds. Associated work includes armoring the pond outlet and redirecting to a grassy swale to hydrologically disconnect the pond from the adjacent Class II watercourse, as well as backfilling and compaction of fill and rock armoring, as necessary, to minimize erosion. Conditions of approval require the applicant to implement any remaining projects and to comply with the requirements established under the Final SAA.

Per a Pond Remediation Status Report, prepared by A.M. Baird Engineering and Surveying, Inc. in March 2019 (Attachment 3), the subject site originally contained two (2) ponds, both of which were included in the Final SAA described above. As described in the Report, the 200,000-gallon pond, originally constructed prior to 2005 and expanded in 2013, was filled in with approximately 1,240 cubic yards of material and turned into a flat, which now supports cultivation. The 500,000-gallon pond, originally constructed between late 2016 and early 2017, was lined in May 2018 with an impermeable liner, which involved placement of some new fill material and the overflow was redirected, consistent with the Final SAA. After upgrades, the pond is approximately 600,000-gallons in size. The Report notes that the pond receives both sheet flow and concentrated runoff from a constructed ditch on the upslope side of graded flats beneath grading cut areas and from a small section of the road leading to the site, which is directed into a 12-inch culvert that is directed to the pond. It is further noted that "the pond is located in close proximity to a nearby stream determined to be a Class II stream by Timberland Resource Consultants" (at most 60 feet between grading fill and the stream transition line), and recommends erosion control measures be installed immediately, with weekly monitoring during the wet season following installation of the erosion control measures. As a condition of approval, the applicant is required to implement all remaining recommendations contained in the Pond Remediation Status Report.

Biological Resources

Per review of CDFW's California Natural Diversity Database (CNDDDB) in January 2022, there are no mapped sensitive species onsite. The nearest Northern Spotted Owl (NSO) positive sighting is located approximately 1.30 miles from the nearest cultivation area, with the nearest NSO activity center located approximately 1.61 away, respectively. Power at the site is currently provided by three (3) generators. There are no long-term plans to convert to grid or solar power at this time, as it is cost prohibitive.

Conditions of approval require the applicant to implement light and noise 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. Further, due to the onsite pond, the project is conditioned to require the applicant coordinate with CDFW to determine if a Bullfrog Management Plan is required and meet the annual reporting requirements, not stock the pond with fish without written permission from CDFW, and install an overflow spillway to the off-stream pond that will withstand a 100-year flood event and exit ramps to the off-stream pond to prevent wildlife entrapment. 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.

Access

Access to the site is via a driveway off Lower Thomas Road via Thomas Road and Salmon Creek Road to Highway 101. Portions of Thomas Road and Salmon Creek Road are included on the list of County-maintained roads that meet (or are equivalent to) road Category 4 standards for cannabis projects. A Road Evaluation Report for an approximately 1.8-mile segment of Lower Thomas Road, from Thomas Road to the subject property, was prepared in April 2019 by the applicant's representative (Attachment 3), which indicates that the roadway meets a Category 4 road equivalent standard and is adequate for the proposed use. Per comments received from the Department of Public Works, Land Use Divisions, dated August 2018, any existing or proposed non-county maintained access roads that will 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 that private road intersections onto the County road shall be maintained in accordance with County Code section 341-1 (Sight Visibility Ordinance), which have been included as conditions of approval.

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 287 permits and the total approved acres would be 74 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.