

Recommended 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; and
4. Close the hearing and take the following action:

Adopt the resolution finding that the Commission has considered the Addendum to the adopted Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) pursuant to Section § 15164 of the State CEQA Guidelines, making all of the required findings for approval of the *Special Permits based on evidence in the staff report, and adopt the Resolution approving the Love and Laughter Farms, LLC., project subject to the recommended conditions.*

Executive Summary: The applicant is seeking a Special Permit for 10,000 square feet of existing full-sun outdoor commercial cannabis cultivation. One harvest is obtained annually. Processing such as drying and curing occurs onsite in an existing 770 square foot structure, further processing occurs offsite at a licensed third-party processing facility. The project is owner operated; therefore, no employees are required. The project was referred to the Division of Environmental Health which requested that the applicant be required to either provide portable toilets to the cultivation site or install a permitted onsite wastewater treatment system and discontinue the use of the backpacking toilet. This requirement is included as a condition of approval (**General Condition A.10**).

Setback Reduction

The applicant is also seeking a Special Permit for a setback reduction to public lands. The applicant submitted a *Boundary Survey*, prepared by a qualified surveyor, which found that the southernmost cultivation site is located 72 feet from the western property line shared with the BLM and the northern cultivation site is located 160 feet from the western property line. The project was referred to the BLM on September 13, 2021, no response was received.

Energy Resources

Energy for the project is sourced from two generators, one of which is a 2-kW generator, and the other is a 6.5-kW generator. The 2-kW generator is used to power an electric atomizer for foliar spraying twice a month for a few hours at a time. The 6.5-kW generator is used to power drying equipment which is required for approximately 10 to 14 days and run continuously during that time. An ongoing requirement for the project will require the applicant to maintain project related noise at or below 50 decibels as measured 100 feet from the noise source or edge of habitat (**Ongoing Requirement B.1**). A recommended condition of approval would require the applicant develop an alternative energy source on the parcel within 3 years of project approval that is capable of supplying 80% of the energy demands of the cultivation operation including , all nursery lighting, fans, dehumidifiers, and water pumps used for irrigation (**Condition of Approval A.9**).

Water Resources

Water for irrigation has historically been sourced from a registered point of diversion from Pine Creek (H100554). However, the applicant is transitioning to rainwater catchment as the primary irrigation source. The applicant is required to install a rainwater catchment system prior to the 2023 cultivation season and submit a revised site plan and addendum to the Operations Plan to the Planning Department for review and approval (**General Condition A.6**). The registered diversion will be utilized for domestic purposes. The applicants projected annual water usage is 37,500 gallons and existing water storage totals 37,500 gallons. To ensure there is adequate water onsite to serve the operation, a

condition of approval for the project will require the applicant to install a water meter at the point of withdrawal from the rainwater collection system and maintain records of weekly water usage (**General Condition A.7**).

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 cultivation permits and acres which may be approved in each of the County's Planning Watersheds. The project site is located in the Lower Klamath Planning Watershed, which under Resolution 18-43 is limited to 161 permits and 56 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 16 cultivation permits and the total approved acres would be 5.41 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).

Biological Resources

A review of the California Natural Diversity Database found that the nearest Northern spotted owl (NSO) activity center is approximately .8 miles north of the project site. The project site is also adjacent to public lands which is designated critical habitat for the Marbled murrelet. The applicant submitted a *Biological Assessment* prepared by Leopardo Wildlife Associates which states that the project will not impact the NSO or Marbled Murrelet with noise mitigation, nor is the project anticipated to impact any sensitive natural communities or special status plant or animal species.

The CNDDDB also reflects the potential for the site to host the foothill yellow-legged frog. All project components adhere to the streamside management area setback requirements. The drying shed which is located nearest Pine Creek is located over 100 feet from the top of the bank. The project was referred to the California Department of Fish and Wildlife (CDFW) in August of 2017, no response was received. The applicant has entered into a Final Lake and Streambed Alteration Agreement (LSAA) with CDFW which will require the applicant to improve and replace undersized culverts, upgrade stream crossings, and improve diversion infrastructure. The applicant is required to adhere to all provisions outlined in the Final LSAA (**Ongoing Requirement B.17**).

Timber Conversion

The project was referred to CAL FIRE in September of 2017 and received a response that their department could not support the project due to unpermitted tree removal on the parcel. Based on aerial imagery, trees were removed from the parcel between 2016 and 2018. The applicant submitted a *Timber Conversion Evaluation Report* which documented the conversion of .20 acres of timberland post-2015 baseline conditions. The applicant submitted a *Restocking Plan*, prepared by a Registered Professional Forester which calls for the restocking of an equivalent area. A condition of approval requires the applicant to implement the RPF's recommendations (**Condition of Approval A.8**). The project will not result in the net loss of timberland.

Tribal Cultural Coordination

The project site is located in the aboriginal territory of the Hoopa Valley Tribe. The project was referred to the Northwest Information Center (NWIC) and Hoopa Valley Tribe in August of 2017. The assigned planner contacted the tribe via email on December 20, 2021, January 10, 2022, January 19, 2022, and January 24, 2022, but was not successful at receiving a response. The NWIC recommended the applicant submit a Cultural Resource Survey. The applicant submitted a *Cultural Resource Inventory Report*

prepared by DZC Archaeological and Cultural Resource Management, dated February 2022, which states that the project as proposed is not anticipated to impact any tribal cultural resources. The applicant will be required to adhere to the inadvertent discovery protocol (**Ongoing Requirement B.X**).

On April 8, 2022, the Planning Department submitted a letter to the Hoopa Valley Tribe (attached) requesting a response to the proposed project. The letter included the Project Description, *Site Plan*, and a copy of the *Cultural Resource Inventory Report* submitted by the applicant. The documents were sent via certified mail, and were stamped received on April 12, 2022. No response to the materials has been received.

Access

The subject parcel is located approximately .65 miles off a privately maintained road which takes access from Bair Road, a county-maintained road. A *Road Evaluation Report* was prepared by the applicant for the private access road which documents the access road as being developed to the equivalent of a Category 4 standard and meets the functional capacity required for the project's needs. The applicant will implement the recommendations made by the Department of Public Works Land Use Division which requested two conditions of approval be added to the project requiring the applicant to improve and maintain visibility where the private access road intersects with the county-maintained road, Bair Road and that the applicant be required to improve the location where the driveway intersects with Bair Road. These recommendations have been included as conditions of approval for the project (**General Conditions A.13**). Provisions have been made in the applicant's *Site Management Plan*, dated May 2021, to minimize discharge of sediment off-site and improve drainage features on the private access road. A condition of approval will require the applicant to implement the recommendations outlined in tables 1 and 2 of the *Site Management Plan* (**Condition of Approval A.11**).

The subject parcel is located within an area with very high fire hazard severity. The subject property is located within the State Fire Responsibility Area for fire protection (CAL-FIRE). Comments made by the California Department of Forestry and Fire Protection recommend compliance with the requirements of the County's Fire Safe Regulations. A condition of approval will require the applicant to submit a revised site plan showing the location of the SRA turn around and the location of a 2,500-gallon water tank dedicated to fire suppression (**Condition of Approval A.12**).

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.

RECOMMENDATION: 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 Special Permit.

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.