

**Recommended Commission Action**

1. Describe the application as part of a public hearing.
2. Request staff to present the application and staff report;
3. Open the public hearing and receive testimony;
4. Close the public hearing and adopt the Resolutions to take the following actions:

*1) Find that the Commission has considered the Addendum to the adopted Mitigative Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) as described by Section §15164 of the State CEQA Guidelines, 2) make all of the required findings for approval of the Special Permits and 3) approve the MDRV Realty Holdings, LLC Special Permits as recommended by staff subject to the recommended conditions.*

**Executive Summary:** MDRV Realty Holdings, LLC seeks a Special Permit for 2,000 square feet (sf) existing outdoor and 4,850 sf existing mixed-light cannabis cultivation with a 720 sf ancillary propagation area. Water for irrigation is provided by a stream diversion on-site. A Special Permit is being requested for the continued use and maintenance of the stream diversion. There is a total of 110,000 gallons of water storage on-site in fifteen (15) hard sided tanks, and three (3) 20,000 gallon water bladders (two bladders are temporary water storage for the adjacent parcel 208-241-007). Estimated annual water usage is 50,000 gallons. Drying and curing will occur on-site and trimming will occur off-site at a licensed processing facility. Up to two (2) employees are used for on-site operations. Power is sourced from an on-site generator, and future solar is proposed. An additional Special Permit is being requested to reduce the 600-foot setback to public lands (SRNF).

The applicant utilizes portable toilets to serve on-site wastewater treatment system needs. The project was referred to the Department of Environmental Health (DEH) on April 25, 2019, and comments were received by the agency on April 30, 2019, recommending conditional approval for the project. The applicant shall provide receipts or other equivalent documentation annually to the Planning Division for proof of portable toilet service until the applicant has obtained a permitted septic system on-site with DEH (**Ongoing Condition B.1**).

The project was referred to the Building Division on April 25, 2019, and a site inspection was conducted on June 13, 2019. Comments from the Building Division included to submit a revised Site Plan and obtain the necessary building permits for all structures and grading associated to cannabis activities on-site. A revised Site Plan has been submitted. There are a total of two (2) mixed-light greenhouses, one (1) proposed ancillary nursery greenhouse, and one (1) 2,000 sf full-sun outdoor area. There are two (2) existing storage sheds, and one (1) generator shed. Drying and curing will occur on-site and processing will occur off-site at a licensed processing facility. The applicant shall keep documentation of proof of third-party processing service, to be furnished during an annual inspection (**Ongoing Condition B.2**). The applicant is conditioned to obtain building permits for all existing and proposed structures with a nexus to cannabis, including but not limited to: two (2) mixed-light greenhouses, one (1) greenhouse for ancillary propagation, two (2) storage sheds, one (1) generator shed, and grading activities association with the cultivation area (**Condition A.7 & A.8**).

**Energy**

The applicant currently utilizes one (1) generator on-site, which is housed within a generator shed. The applicant plans to transition to on-site solar power. The applicant shall permit the proposed solar system with the Building Division (**Condition A.10**).

**Setbacks**

The project is located within 600 feet of public lands, the Six Rivers National Forest (SRNF). The nearest proposed cultivation area is located approximately 320 feet to the SRNF boundary, and the applicant is

requesting a Special Permit to allow a setback reduction to public lands. The project was referred to the SRNF on April 25, 2019, and no comments were received. The project is consistent with recreational use on public lands as the proposed project is not located near developed campgrounds, trails, or other related public facilities.

The adjacent public land is subject to the Land and Resource Management Plan - Six Rivers National Forest 1995 (L&RMP). The project is consistent with the L&RMP because the cultivation activities will minimize impacts to biological resources and wildlife by adhering to International Dark Sky Standard, reducing light and noise impacts, and adding an on-site solar system.

### **Water Resources**

The project will source water from an on-site stream diversion, POD1 under Water Right Certificate H100251 & H100730. The project was referred to the State Water Board Division of Water Rights on April 25, 2019, and comments were received on April 29, 2019, recommending approval for the project under Water Right Certificate H100251. Water Right Certificate H100251, dated 8/27/2018, lists the subject parcel but states that diversionary water is to be used for 0 acres of irrigation on APN: 208-241-006. An updated Water Right Certificate H100730, dated 11/25/2019, (updating the Right Holder as the current property owner, and increasing the overall water allowed to be diverted) includes POD1 on APN: 208-241-006, but only shows adjacent parcel APN: 208-241-007 for purpose and use. The adjacent parcel (application PLN-11212-CUP) will only utilize POD 2 in the Water Right Certificate, and all water sources are separate for the adjacent projects. The applicant shall contact the State Water Board Division of Water Rights to update the Water Right Certificate H100730 to include for the purpose and use of irrigation on APN: 208-241-006 for 0.17 acres, and shall submit the updated Water Right Certificate to the Planning Division (**Condition A.9**). Water Right Certificate H100730 allows for the annual diversion of up to 0.94 acre-feet (306,300 gallons), which is a sufficient amount of water for the purpose and use on APN's: 208-241-006 & 208-241-007 (which are estimated to use a total of 200,000 gallons of water annually). The applicant shall adhere to the terms and restrictions in the Water Right Certificate H100730, or subsequent Water Right, such as forbearance and diversion rate requirements (**Ongoing Condition B.3**).

Estimated annual water needed for irrigation on-site is approximately 50,000 gallons. There is a total of 110,000 gallons of water storage on-site in fifteen (15) hard sided tanks, and three (3) 20,000 gallon water bladders. Two (2) 20,000 gallon bladders in the southern portion of the property are temporary water storage designated for the adjacent parcel to the south 208-241-007, and one (1) 2,500 gallon tank is proposed for fire suppression. The applicant shall decommission all water bladders on-site within two years from the date of approval (**Condition A.5**). The final amount of water storage on-site will be 50,000 gallons, after the water bladders are removed.

The site was historically enrolled in the North Coast Regional Water Quality Control Board's Order No. R1-2015-0023, under WDID: 1B161267CHUM. The applicant has also enrolled in the State Water Resources Control Board's (SWRCB) General Order WQ 2019-0001-DWQ, as a Tier 2 Low Risk site. A Notice of Applicability letter dated December 26, 2019, was submitted as proof of enrollment under WDID: 1\_12CC417973. The applicant has had a Site Management Plan (SMP) prepared by Mother Earth Engineering, to show mitigation measures required for the project to meet Water Board standards, received December 8, 2021. The SMP was prepared for both adjacent parcels APN's: 208-241-006 & 208-241-007, and lists Best Practicable Treatment or Controls (BPTC) for the project. The applicant shall adhere to the recommendations and BPTC's listed in the SMP (**Ongoing Condition B.4**).

There are four (4) culverts on-site that need replacing, a stream point of diversion located on-site for irrigation (POD1 under Water Right Certificate H100730), and a spring point of diversion located on the adjacent parcel to the north for domestic uses. The applicant has obtained a Streambed Alteration Agreement (SAA No. EPIMS-HUM-15838-R1) with the California Department of Fish & Wildlife (CDFW) for all in-stream work associated with the project. The applicant is conditioned to abide by and adhere to the terms, project description and work outlined within the final signed SAA No. EPIMS-HUM-15838-R1 with CDFW (**Ongoing Condition B.5**).

### **Timber Conversion**

The site contains timber conversion, and the applicant had a Timber Conversion Report (TCR) prepared by Blair Forestry Consulting, dated January 13, 2018. The TCR was combined for the two (2) adjacent parcels owned and operated by the applicant, and estimates that a total of 1.15 acres of timber conversion occurred in total on both parcels. The TCR recommends that the applicant address road surface points on roads leading to conversion sites and a watercourse crossings at SC#2 (**Condition A.11**). The project and TCR was referred to CalFire on April 25, 2019, and the agency replied stating that they had no comments on the proposed project.

### **Fire Hazard**

The project is located in an area designated to have high fire hazard severity, and is within the Ruth Lake Community Services District (RLCSD) for fire response. The project was referred to the RLCSD on April 25, 2019, and no comments were received from the agency. There is ample room on-site for a firetruck turnaround, and a 2,500 gallon water tank is proposed for fire suppression.

### **Biological Resources**

The project is located approximately 0.87 miles to the nearest known Northern Spotted Owl (NSO) activity center, and no rare or endangered species are shown on or near the subject parcel in the California Natural Diversity Database (CNDDDB). The applicant has enrolled in the SWRCB's Order No. 2019-001-DWQ for waiver of waste discharge, all cultivation areas are located outside of any streamside management areas on-site, and the applicant plans to add a future solar system on-site. As the site is pre-existing, and there is no new development proposed, the applicant was not required to provide a Biological Report for the project. The applicant is required to comply with International Dark Sky Standards, and shall not allow any light to escape from mixed-light or nursery greenhouses from dusk to dawn, and shall ensure that all noise levels do not go above 50 decibels at any tree line or 100 feet when noise generating equipment are in use (**Ongoing Conditions B.6 & B.7**).

### **Tribal Cultural Resource Coordination**

The project is located in the Bear River Band Aboriginal Ancestral Territories. The project was referred to the Northwest Information Center (NWIC), and the Bear River Band Tribe on April 25, 2019. The NWIC replied on May 6, 2019, recommending that the local Native American tribes be contacted regarding traditional, cultural, and religious heritage values. The Bear River Band THPO replied on July 12, 2019 requesting a Cultural Resource Survey (CRS) for the project. The applicant has obtained a CRS for the project site, which was prepared by Dimitra Zalarvis-Chase, M.A., RPA, with DZC Archaeology & Cultural Resource Management, dated December 2019. The CRS states that the archaeological survey was negative for cultural resources, and that there will be no adverse effects or changes to any historic resources on the project site. The applicant shall adhere to Inadvertent Discovery Protocols, as requested by the Bear River Band THPO on March 24, 2021 (**Informational Note 3**).

### **Access**

Access to the site is from Eight Mile Ridge Road, from County Line Creek Road, from State Hwy 36. Both Eight Mile Ridge Road and County Line Creek Road are non-county maintained roads off of Hwy 36. The applicant has submitted a Road Evaluation Report (RER) form for the access route from Hwy 36, (calling Eight Mile Ridge Road as Ridge Road, and County Line Creek Road as Salyer Mad River Road, named as such on Google Earth) which includes photos and a route map showing photo locations taken at pinch point areas on the road. The RER designates the private access roads as being developed to the equivalent of a category 4 standard, and states that the roads are adequate for the proposed use without further review from the applicant. All approved projects off of the access road will be required to have a Road Maintenance Association developed and will be required to maintain the road through the County's post-approval monitoring team. The project was referred to the Department of Public Works on April 25, 2019, and comments were received on April 29, 2019. Comments from Public Works stated that the access route is from a series of non-county maintained roads that connect directly to State Hwy 36, and recommended that the project be referred to CalTrans. The project was referred to CalTrans on July 18, 2019, and no comments were received by the agency.

## **Public Comment**

A public comment from an anonymous neighbor was submitted in the form of a phone call and also in a subsequent email. Another neighbor attended the previous hearing date on March 3, 2022, and stated their same concerns regarding the project. The public commenters addressed concerns about the constant use and road damage of up to one mile of Eight Mile Ridge Road used by employees between the two adjacent parcels (APN's: 208-241-007 & 208-241-006 owned and operated by the applicant) which runs through three (3) neighboring parcels, safety concerns regarding unsafe traffic on the access roads, employee parking on Eight Mile Ridge Road blocking through access, theft issues with applicant's employees, concerns about the reported annual water usage being underestimated, concerns about the use of a spring located on Six Rivers National Forest for cannabis irrigation, safety concerns regarding fire hazard with generator usage, gates being left unlocked, and light and noise pollution complaints.

A response to the public comment was received by the applicant on March 21, 2022, addressing the concerns stated by the neighbors. The applicant states that he purchased the properties last year, and 2021 was the first cultivation season run by the current applicant. The applicant states that he never met any neighbors at the site, and that the easement road that connects the two properties does not pass any residences that he is aware of. Nor was the applicant aware of any theft allegations, or any presence of light or noise pollution, which may have occurred during the previous applicant's ownership of the project. The applicant has also stated that his employees share the work through both projects, but in the event that one project is sold, they would not utilize more than two (2) employees per project, and would not result in more than 1 vehicle trip (but in actuality 2 vehicle trips, one to and one from the site) per day per parcel. The applicant has also stated that they will discontinue the use of Eight Mile Ridge Road to access the two sites and will instead utilize a skid trail that connects the two adjacent parcels. However, as there is no evidence that this skid road is developed to any suitable extent this is not recommended for use by County staff. The Road Evaluation Report supports the use of the primary road to continue to be utilized. There are three parking spaces shown on the Site Plan, and the applicant shall utilize the on-site parking area and shall not block the access route through Eight Mile Ridge Road (**Ongoing Condition B.9**).

The applicant does have a Streambed Alteration Agreement (SAA No. EPIMS-HUM-15838-R1) with CDFW allowing the use of the spring located on the Six Rivers National Forest APN: 208-241-005, to be used for domestic purposes only on APN's: 208-241-006 & 208-241-007. There is also an appropriated Water Right (D030916) which expired on July 1, 2014, and the applicant has submitted a request to renew the Water Right for the use of domestic purposes on APN's: 208-241-006 & 208-241-007. The applicant shall be informed that the spring diversion on Six Rivers National Forest is not allowed for the use of cannabis irrigation (**Informational Note 4**).

## **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 Mad River Planning Watershed, which under Resolution 18-43 is limited to 334 permits and 115 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 65 cultivation permits and the total approved acres would be 24.73 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).

**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 Permits (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.