

Daydream Enterprise, LLC
Record Number: PLN-12493-CUP
Assessor's Parcel Number: 208-231-011

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:

1) Find that the Commission has considered the Addendum to the adopted Mitigated Negative Declaration for the Commercial Medical Land Use Ordinance (CCMLUO) as described by Section §15164 of the State CEQA Guidelines; 2) make all of the required findings for approval of the Conditional Use Permit and Special Permit; 3) and approve the Daydream Enterprise, LLC, Conditional Use Permit and Special Permit as recommended by staff subject to the recommended conditions.

Executive Summary: A Conditional Use Permit to allow the continued cultivation of 18,135 square feet (SF) of outdoor cannabis utilizing full sun and light deprivation techniques and 1,000 SF of proposed ancillary propagation (for a total of 18,788 SF of onsite cultivation) 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 and remediation activities within the Streamside Management Area (SMA) in accordance with the County's Streamside Management and Wetlands Area Ordinance (SMAWO). The site is designated as Residential Agriculture (RA20-160) 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 occurs within the northern, northwestern, and western portions of the site and include 5,088 SF of light deprivation cultivation occurring in four (4) greenhouses and 12,700 SF of full sun outdoor cultivation. Ancillary propagation is proposed within a 1,000 SF within the southern portion of the subject property. Two (2) harvests are anticipated annually for the cultivation utilizing light deprivation techniques and one (1) harvest for the full sun outdoor cultivation, for a growing season that extends from March through October.

Processing activities including trimming and packaging will occur in a 768-square-foot (24'x32') commercial building proposed within the northwestern corner of the subject property. Up to six (6) employees may be utilized during peak operations. The operation will be secured behind a gated road, motion sensor security cameras, and locked structures.

Power is provided by two (2) gasoline generators (Honda EU2000 and EU3000) and a 320-watt solar array. The solar array is located on an adjacent property (APN 208-231-013), located southeast of the subject site. In information provided by the applicant's agent in March and April 2022, it was noted the applicant has long-term plans to add additional solar when financially feasible and is agreeable to fully converting to solar. Conditions of approval require the applicant to submit an energy use plan that describes the power demand for the project that includes a description of what power is required for (e.g., propagation, cultivation, and processing) and how much power is required on a monthly and annual basis. The energy plan shall also include a description of the generator(s) used to meet the power demand and state how the size of the generator is reasonable based on the power demand. The generator(s) used to support operations shall not be larger than required to meet operational needs. The plan shall also describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026 (**Condition of Approval #10**). In addition, should continued use of the solar array on the adjacent property (APN 208-231-013) for the project occur, the applicant shall record a contingent easement to allow conveyance of power from the solar array from APN 208-231-013 to allow for cultivation to continue as described by this application if the subject parcels are sold and operated by different entities. The contingent easement will specify that in the event APN 208-231-013 is sold, an easement will be granted along with the property transfer (**Condition of Approval #11**).

While Six Rivers National Forest appears to be located near the subject site, as shown on the County's GIS portal, the nearest cultivation area appears to be located approximately 760 feet east of the public lands as measured on Web GIS, which is outside of the 600-foot required setback from public lands.

Cultivation and Nursery Space

As noted above, the application is for 18,135 SF of existing outdoor cannabis cultivation in addition to 1,000 SF of ancillary propagation proposed within a separate greenhouse. The onsite nursery equates to approximately 5.6% of the total current cultivation area, which complies with what planning division staff and the Planning Commission have found allowable in the past (i.e., a nursery space of 10% of the cultivation area). Based on the County's cultivation area verification, 18,135 SF of cultivation was in existence prior to the CMMLUO environmental baseline date of January 1, 2016. Because the parcel is zoned FR, is over 5 acres in size, and irrigation water is sourced from a non-diversionary source, new cultivation could be considered on the subject parcel and Planning staff is supportive of the proposed ancillary propagation space. A condition of approval is recommended to require the proposed propagation greenhouse be located outside of all required Streamside Management Area (SMA) buffers and on a previously disturbed area (**Condition of Approval #8**).

Onsite Relocation

As previously described, a Special Permit is included for relocation and remediation activities within the Streamside Management Area (SMA) in accordance with the County's Streamside Management and Wetlands Area Ordinance (SMAWO). Onsite relocation is proposed under the project in order to relocate an existing greenhouse currently located within a SMA buffer outside of the required buffer. A *Cultivation Site Relocation Assessment* was prepared by Kyle S. Wear, a botanical consultant, in October 2018, that evaluated a cannabis cultivation relocation area on the subject site, as well as on an adjacent property to the southeast (APN 208-231-013), for sensitive biological and aquatic resources (Attachment 3). As shown on the Site Plan, a 1,440 SF greenhouse, a 384 SF structure utilized for harvest, generator, and fuel storage, wash station, and break area, and three (3) poly water tanks (two of which are utilized for domestic use) are located onsite within the Streamside Management Area (SMA) setback distance buffer as described in the Streamside Management Area and Wetland Ordinance (SMAWO). The *Assessment* determined that the relocation area for the greenhouse on the subject property (identified as Cultivation Area 2 on the Site Plan) is located within grassland dominated by non-native grasses, which has relatively low potential for special status plants and wildlife. Additionally, the relocation area was found to be on more gentle slopes than the original site, thus having less potential for erosion, and is outside of required SMA buffers. Due to the environmental description and findings provided in the *Assessment*, Planning staff supports the relocation of this cultivation area to an area considered to be environmentally superior to its current location. As described in the Cultivation and Operations Plan (Attachment 3), the greenhouse has been relocated and remediation has occurred. The project is conditioned to relocate the other cultivation-related infrastructure identified within the SMA buffer (including the 384 SF structure and 300-gallon water storage tank) to a previously disturbed area outside of required SMA buffers without the use of heavy machinery. In addition, the applicant shall provide and adhere to a remediation plan prepared by a qualified professional to assess and provide recommendations on remediation actions at these historic locations (**Condition of Approval #7**).

Water Resources

Estimated annual water usage is 106,800 gallons (8.56 gal/SF) with peak demand occurring in at approximately 30,300 gallons, respectively, per the table below (Table 1).

Table 1. Estimated Monthly Water Use Estimates (in gallons)

Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
0	0	0	800	3,100	10,200	30,300	29,000	26,800	6,600	0	0

Total: 106,800 gallons

Water for irrigation is provided by a rainwater catchment pond with an approximate storage capacity of 145,000 gallons. The site also contains eight (8) hard-sided water storage tanks for irrigation (totaling 19,150 gallons), including three (3) 5,000-gallon, one (1) 250-gallon, two (2) 3,000-gallon, one (1) 2,500-

gallon, and three (3) 300-gallon hard-sided water storage tanks, for a total of 164,150 gallons of onsite water storage. Rainwater from the pond is used to fill the water storage tanks. The average rainfall for the project area is 55.4 inches (4.62 feet), based on averaging rainfall values from 2011 through 2020 as recorded by PRISM Climate Group. The total storage capacity of the rainwater catchment pond and storage tanks (164,150 gallons) exceeds project needs estimated at 106,800 gallons by 57,350 gallons per year, or 35%. 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 (**Condition of Approval #25**).

The Humboldt Bay Municipal Water District (District) provided comments on the project in October 2018 (Attachment 4), in which it was noted the project may be subject to CEQA review and requests the County to verify with the Water Board the water rights claimed to be owned and permitted by the applicant, as the District understands the State Water Resources Control Board (SWRCB) has determined the Mad River is fully appropriated and are therefore no more water rights available for appropriation. Water for irrigation is provided by rainwater catchment, therefore, no appropriate water rights are required to support the project. Regarding CEQA review, an Addendum to a previously adopted Mitigated Negative Declaration has been prepared for the project per §15164 of the State CEQA Guidelines (Attachment 2), as the current project was in existence prior to the CMMLUO environmental baseline date of January 1, 2016, and was thereby assessed under the by the MND. Additionally, Planning staff finds that compliance with the provisions of the CMMLUO and the recommended conditions of approval will ensure all potential environmental impacts of the project are reduced to a less than significant level.

Regarding the project's water right, the project was confirmed to have an active Initial Statement of Water Diversion and Use (S026334) with the SWRCB for an instream point of diversion in an unnamed tributary to the Mad River for domestic use. This permit does not authorize the use of the point of diversion for irrigation for commercial cannabis production. As detailed in the Supplemental Statements of Water Diversion and Use for 2017 through 2020 on the SWRCB's Electronic Water Rights Information Management System (eWRIMS) portal, the water associated with this water right is stated to be utilized for one (1) person and a small vegetable garden, and is not utilized for the cultivation of cannabis.

Biological Resources

A review of the California Department of Fish and Wildlife (CDFW) Biogeographic Information and Observation System (BIOS) was performed on October 14, 2021, in which one (1) sensitive species (Oregon goldthread) was mapped to have the potential to occur onsite but did not overlap any existing or relocated cultivation areas. The nearest NSO activity center is located approximately 2.34 miles away from the nearest cultivation area with the nearest positive sighting located approximately 0.7 miles away. Lands surrounding the site are not heavily forested, thus there is a low potential for NSO habitat. The proposed project involves full sun outdoor cultivation and outdoor cultivation utilizing light deprivation techniques. As previously discussed, power is provided by two (2) gasoline generators (a Honda EU2000 and a EU3000) and a 320-watt solar array, with the solar array located on an adjacent property (APN 208-231-013), located southeast of the subject property. Both of the generators are housed in sheds that insulate noise. The applicant has long-term plans to add additional solar as financially feasible and is agreeable to fully converting to solar. Conditions of approval require the applicant to submit an energy use plan that describes the power demand for the project that includes a description of what power is required for (e.g., propagation, cultivation, and processing) and how much power is required on a monthly and annual basis. The energy plan shall also include a description of the generator(s) used to meet the power demand and state how the size of the generator is reasonable based on the power demand. The generator(s) used to support operations shall not be larger than required to meet operational needs. The plan shall also describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026 (**Condition of Approval #10**). In addition, should continued use of the solar array on the adjacent property (APN 208-231-013) for the project occur, the applicant shall record a contingent easement to allow conveyance of power from the solar array from APN 208-231-013 to allow for cultivation to continue as described by this application if the subject parcels are sold and operated by different

entities. The contingent easement will specify that in the event APN 208-231-013 is sold, an easement will be granted along with the property transfer (**Condition of Approval #11**). The project is also conditioned such that generators shall have secondary containment for fluid catchment and noise generated from generators shall not exceed 50 decibels (dB) at 100 feet from the generator or at the edge of the nearest forest habitat, whichever is closer, as required by Section 314-55.4.11(o) Humboldt County Code (**Condition of Approval #20**). Further, any supplemental lighting utilized for security or within the proposed nursery area will adhere to International Dark Sky Association standards and prevent light spillage to reduce impacts on local wildlife (**Condition of Approval #21**).

The Site Plan shows that seven (7) Class III watercourses and one (1) Class II watercourse traverse the site and includes the associated 50 and 100-foot Streamside Management Area (SMA) buffers, respectively. As described above and as shown on the Site Plan, a 1,440 SF greenhouse, a 384 SF structure utilized for harvest, generator, and fuel storage, wash station, and break area, and three (3) poly water tanks (two of which are utilized for domestic use) are located within the SMA buffers and are proposed to be relocated to areas outside of these buffer areas to protect riparian habitat. As described above and detailed in the Cultivation and Operations Plan (Attachment 3), the greenhouse has been relocated and remediation has occurred. The project is conditioned to relocate the other cultivation-related infrastructure identified within the SMA buffer (including the 384 SF structure and 300-gallon water storage tank) to a previously disturbed area outside of required SMA buffers without the use of heavy machinery. In addition, the applicant is required to provide and adhere to a remediation plan prepared by a qualified professional to assess and provide recommendations on remediation actions at these historic locations (**Condition of Approval #7**).

A Site Management Plan (SMP) was prepared by Margro Advisors, dated 6/27/2019 and revised 11/12/2020 (WDID 1_12CC417805; Attachment 3) in compliance with the Cannabis General Order in order to identify conditions present onsite that may pose a threat to water quality and resources and establish a plan to meet or surpass requirements set for in the Cannabis General Order, as well as to describe how the cultivation is implementing the required best practical treatment or control (BPTC) measures listed in Attachment A of the Cannabis General Order. The SMP identifies six (6) water crossings onsite, five (5) of which were noted to be in good condition. However, one (1) existing dirt ford is the replacement with a rocked ford crossing. The project is conditioned to require implementation of all recommendations and ongoing adherence to all actions detailed in the SMP (**Condition of Approval #13**).

A Final Streambed Alteration Agreement (SAA) was executed on 6/13/2018 between the landowner and the California Department of Fish and Wildlife (CDFW; Notification No. 1600-2017-0387-R1; Attachment 3). The SAA covers eight (8) encroachments, including a water diversion from an unnamed tributary to the Mad River for domestic use, five (5) culvert upgrades, and two (2) encroachments to install rocked fords. Conditions of approval require the applicant to implement any remaining projects and to comply with the requirements established under the Final SAA (**Condition of Approval #15**). . . Staff reached out to CDFW for comments on the project on 10/14/2021 (Attachment 4); to date, no response has been received.

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 (**Conditions of Approval #20-23 and Ongoing Conditions of Approval #4, 5, and 7**). 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, 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 (**Condition of Approval #16**). In addition, the applicant shall not stock the pond with fish without written permission from CDFW for the life of the project (**Ongoing Condition of Approval #24**). 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.

Proximity to Dinsmore Airport

The project is partially located within Airport Protected Airspace due to its proximity to the Dinsmore Airport, located approximately 1.5 miles away, as shown on the County's GIS portal. The applicant submitted Form 7460 and obtained a Determination of No Hazard to Air Mitigation from the Federal Aviation Administration (FAA), issued on 08/09/2019 (Attachment 4). According to the FAA, the project and associated onsite structures do not exceed obstruction standards, would not be a hazard to air navigation provided the conditions in the Determination are met (included as **Ongoing Conditions of Approval #25-27**), and no marking or lighting is necessary for flight safety. If any construction or alteration is made to the building heights on the parcel, a notice must be submitted to the FAA within five days after the construction or alteration is dismantled or destroyed, and is included as an ongoing condition of approval (**Ongoing Condition of Approval #27**). Further, the FAA Determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction. However, this equipment shall not exceed the overall heights as indicated in the FAA Determination. Equipment which has a height greater than the studied structure requires separate notice to the FAA (**Condition of Approval #22**).

The project was referred to the Director of Aviation of for the County of Humboldt on in November 2021. Humboldt County Code Section 333-8 allows the Director of the Department of Aviation to administratively grant a variance when portions of a structure or a tree penetrate the airport protected airspace and the FAA has determined no hazard (see Attachment 3). In correspondence dated March 2022 (see Attachment 4), it was noted the maximum height of structures onsite would be 25 feet associated with a new building (the proposed commercial building). On 3/19/2022, the Director of Aviation noted the Department has no objection to the project's approval. The project is, therefore, in conformance with County airport approach zone building height restrictions. A condition of approval is included requiring the applicant record an overflight easement on the property in order to comply with the Airport Safety Land Use Compatibility Requirements (**Condition of Approval #19**).

Access

Access to the site is via a privately maintained road, Bronco Road, off River Road, leading out to the Humboldt County and Trinity County line. Road Evaluation Reports for a 2.50-mile segment of River Road, from the Humboldt/Trinity County line to Bronco Road (identified as "Unnamed Main Rd), and a 1.25-mile segment of Bronco Road from River Road to the project site, were prepared by DTN Engineering and Consulting in November 2018 (Attachment 3), which indicates the roadway can accommodate the cumulative increased traffic (<400 ADT) from this project and all known cannabis projects if the recommendations in the supplemental report are implemented. As noted in the Report, River Road generally has a width that varies from 12-14 feet in width with 1-2 foot shoulders, most grades are below 16%, and most of the roadway curves generally have turnouts at curves and pullouts at strategically-placed locations along with turnaround areas. Bronco Road was noted to have a width between 10-12 feet in width with 1-2 shoulders, with many grades above 16%. Most of Bronco Road's roadway curves were noted to have turnouts at curves and pullouts at strategically placed locations.

The primary issues identified along the roadway are primarily due to drainage, including partially clogged culverts, lack of waterbars and rolling dips, areas of roadway width reduced due to erosion, driveway approaches at angles less than 75%, hillside slips, and at limited locations, the roadway is under 12 feet in width and over 16% grade. Recommendations in the report include the following:

- Construct three (3) turnouts (Photo locations 18, 184, & 195).
- Repairs to five (5) areas (Photo locations 51, 56, 116, 117, & 118) where slides have occurred including re-establishing a stable slope with grading and placing Rock Slope Protection on the Slope to stabilize with weight.
- Address twenty-nine (29) erosion/drainage issues (Photo locations 8/9, 14, 25/27, 30/31/32, 41, 60, 89, 99, 114/115/116, 117/118/119, 125/126/127, 129, 140, 174, 192, 754, 781, and 848) which includes construction of water bars or rolling dips, areas impacted by nearby slides, or cleaning out clogged culverts.

Due to the number of cultivation projects along Bronco and River Road, both approved and pending, and to assist with the funding to implement the recommended conditions included in the Report, the applicant shall take steps to form a Road Maintenance Association for the maintenance of Bronco Road and River Road. The necessary steps include sending notices to all road users of the requirement to form a Road Maintenance Association and conducting a meeting with the users of the road, especially those engaged in commercial cannabis activities to discuss formation of the Road Maintenance Association. The applicant shall provide evidence, including notice, meeting minutes, and the decision as to whether a Road Maintenance Association is being formed to show this effort. In the event the applicant is unable to coordinate formation a Road Maintenance Association, the applicant shall pay fair-share cost for maintenance of the road to any road user engaged in maintaining the road (**Condition of Approval #18**).

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 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 66 permits and the total approved acres would be 8.37 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.