

**Recommended 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 for the Commercial Medical Land Use Ordinance (CCMLUO), as described by Section §15164 of the State CEQA Guidelines;*
2. *Make the required findings for approval of the Conditional Use Permit; and*
3. *Approve the Lance Berry Conditional Use Permit as recommended by staff subject to the recommended conditions.*

**Executive Summary** Lance Berry seeks a Conditional Use Permit (PLN-12674-CUP) for the continued operation of 23,400 square feet (SF) of cannabis cultivation, comprised of 20,700 square feet (SF) of outdoor cannabis cultivation and 2,700 SF mixed light cultivation for a total cultivation of 23,400 SF and a 2,340 SF nursery. Cultivation occurs in six (6) different cultivation areas on the subject parcel, with five (5) areas for outdoor cultivation and one (1) area for mixed light. The medical cannabis permit application is 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). The sites has been issued a Zoning Clearance Certificate for Interim Permit (IP), based upon the Cultivation Area Verification (CAV) developed for the site. The cultivation area for this Conditional Use Permit is based upon the CAV prepared for the IP.

The project area is located on a ridge top between 2,400-2,800 feet in elevation with moderate slope stability. The present land use designation is Residential Agriculture (RA) with a density of 40 acres per unit, as defined in the Humboldt County 2017 General Plan Update. The 75-acre parcel is zoned as Forestry Recreation (FR) with B-5 overlay, which has a 40 acre minimum (FR-B-5-40). The parcel includes one (1) proposed 2,000-SF residence and associated sewer leach fields. Drying occurs onsite in a 384-SF structure, and further processing occurs offsite. Up to four (4) family members carry out operations, and no additional employees are anticipated onsite. The primary source of electrical power (used to operate propagation lights and pump water) is a Honda EU7000 generator, which is estimated to produce a noise level of 32.4 dB at the nearest property line. Consistent with past actions of the Planning Commission, the project has been conditioned to either connect to a utility provider or have an alternative power source starting January 1, 2026 (**Condition 10**).

**Water Resources**

Irrigation water is sourced from a 388,000-gallon rain catchment pond. Estimated annual water use is 221,000 gallons (9.44 gal/SF). Water is stored in seven (7) 5,000-gallon tanks, two (2) 2,500-gallon tanks, one (1) 1,150-gallon tank, and the 388,000-gallon rain catchment pond. Total water storage is 429,150 gallons. A permitted well (Permit No. 16/17-0576) is located on site, but it not used for cannabis irrigation purposes, and is intended to be used domestically for the proposed residence.

A Site Management Plan (SMP) was prepared by Timberland Resource Consultants (February, 20, 2020) in fulfillment of State Water Resources Control Board (SWRCB) General Order WQ 2019-0001-DWQ. The document was prepared to meet the North Coast Regional Water Quality Control Board (NCRWQCB) requirements for Tier 2 discharges of waste resulting from cannabis cultivation (WDID No. 1B171574CHUM / WDID-1\_12CC416959).

There are nine (9) stream crossings on the access road to the project area, which is used solely by the applicant. Existing culverts are sized for a 100-year storm event and have been updated or modified

pursuant to the recommendations provided in 2017 from the California Department of Fish and Wildlife (CDFW) for the Lake and Streambed Alteration Agreement (LSAA 1600-2017-0053-R1). No additional recommendations/mitigations are outstanding.

Currently, all permanent and seasonal roads on the property have imported and native rock surfacing and do not require any more rock surfacing. Drainage features on roads have been installed and maintained. No alterations to permanent, seasonal, or legacy roads are proposed for the project.

The proposed project is within a Streamside Management Area (SMA) and therefore is required to be consistent with Humboldt County General Plan Policy BR-P6, which requires development within an SMA to comply with Standards BR-S8 (Required Mitigation Measures) and BR-S9 (Erosion Control).

### **Biological Resources**

A Biological Resources Report was prepared by Troy Leopardo of Leopardo Wildlife Associates (July 2019) to assess the potential presence of sensitive biological communities and protected species. Mr. Leopardo conducted a field survey and reviewed the CDFW California Natural Diversity Database (CNDDDB) for species within 1.3 miles of the project. The Biological Assessment Area (BAA) is defined as the area where potential impacts may occur to sensitive or protected species and/or sensitive biological communities. Sensitive species that have the potential to occur within the BAA include: yellow-legged frog (*Rana boylei*), summer-run steelhead trout (*Oncorhynchus mykiss irideus*), western pond turtle (*Emys marmorata*), Wawona riffle beetle (*Atractelmis wawona*), American peregrine falcon (*Falco peregrinus*), Tracy's sanicula (*Sanicula tracyi*), Oregon goldthread (*Coptis lacinate*), and coast fawn lily (*Erythronium revoutum*). During the survey, no potential falcon habitat was found or observed onsite. Furthermore, there is no evidence of Northern Spotted Owl onsite, and the potential for NSO occurrence is rare. The report concluded that project activities would result in minimal impacts to biological species, and therefore no mitigation is recommended.

### **Tribal Cultural Resource Coordination**

A records search for known cultural resources was requested from the Northwest Information Center (NWIC) and revealed that one study was previously conducted in the project area (Leach-Palm et al 2011) and identified one archaeological site (S-38865). The Bear River Band of the Rohnerville Rancheria was contacted and indicated that the archaeological site referenced above appears to be located near a proposed catchment pond (which has since been constructed) and requested completion of a site survey. A Cultural Resources Investigation survey was conducted by Nick Angeloff (Archaeological Research and Supply Company) in August 2020, and is on file with Humboldt County. The survey concluded that no prehistoric or historic resources would be impacted by the proposed project, but recommended implementation of the standard Inadvertent Discovery Protocol in the event that any human remains, or artifacts of cultural significance are encountered during ground disturbing activities (**Condition 14**).

### **Access**

The project is located on the north side of Highway 36, approximately 3,500 feet west of the intersection of Highway 36/Dinsmore Road (Section 5 of Township 01N, Range 05E, Humboldt Base & Meridian), in the unincorporated Dinsmore area in central Humboldt County. The applicant evaluated the non-county maintained access road using forms provided by Humboldt County Department of Public Works (DPW). DPW reviewed the applicant's information and stated "no re-refer" was required. DPW also expressed that a grading permit (for road maintenance) could be required, and the applicant should check with Humboldt County Building prior to any work (**Condition 15**).

### **Generator Use**

The primary source of electrical power, which is used to operate propagation lights and to pump irrigation water, is a Honda EU7000 generator. Generator usage occurs no closer than 200 feet from the nearest property line. The Honda generator is rated at 58 dB at full load, which equates to approximately 32.4 dB at the nearest property line. Consistent with past actions of the Planning Commission, the project has been conditioned to either connect to a utility provider or have an alternative power source starting

January 1, 2026 (**Condition 10**).

**California Environmental Quality Act (CEQA)**

Environmental review for this project was conducted in July 2021 by the County. Based on the results of that analysis, staff finds that all aspects of the project have been considered in the Mitigated Negative Declaration (MND) adopted for the Commercial Medical Marijuana Land Use Ordinance on January 26, 2016. Accordingly, staff 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 believes that the applicant has submitted evidence in support of making all of the required findings for approval of the Conditional Use Permit (CUP).

**ALTERNATIVES:** The Planning Commission could elect to 1) not approve the project, or 2) 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 which case, the Commission should continue the item to a future date at least two months later to provide staff adequate time to complete further environmental review.