

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, approve the Consent Agenda thereby adopting the Resolution to take the following actions

Adopt the Resolution to 1) find 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, 2) make all of the required findings for approval of the Conditional Use Permit, and 3) approve the Lacks Creek Ventures, LLC, project as recommended by staff subject to the recommended conditions.

Executive Summary: Lacks Creek Ventures, LLC, seeks a Conditional Use Permit to allow the continued cultivation of 17,380 square feet (SF) of existing mixed light cultivation and outdoor cultivation utilizing light deprivation techniques, including 2,000 SF of ancillary propagation, 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 site is designated as Timberland (T) in the Humboldt County 2017 General Plan Update and zoned Timberland Production Zone (TPZ). Cultivation takes place within the western and central portions of the property within six (6) greenhouses, with 14,500 SF of outdoor cultivation utilizing light deprivation techniques and 2,880 SF of mixed light cultivation. Ancillary propagation (1,700 SF total) occurs in a separate greenhouse. Two (2) harvests are anticipated annually.

Drying and processing occurs onsite in an existing 1,500 SF shop building. A maximum of five (5) people may be onsite during peak operations. Power is provided by three (3) generators; however, there are plans to convert to solar and wind energy by 2026. Specifically, the applicant is proposing a solar array atop the existing shed, with a windmill proposed in front of the shop building. The operation is secured behind locked gates, and utilizes guard dogs and solar-powered security lighting. Video surveillance is also proposed.

Cultivation and Nursery Space

As noted above, the application is for 17,380 SF of existing mixed light and outdoor cannabis cultivation, which includes 1,700 SF of existing ancillary propagation. The onsite nursery equates to approximately 9.8% 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 and a site visit conducted by County staff, 17,380 SF of cultivation was in existence prior to the CMMLUO environmental baseline date of January 1, 2016. Although the parcel is over 5 acres in size, irrigation water is sourced from a non-diversionary source and the cultivation and propagation areas occur on slopes less than 15%, the subject property is zoned TPZ. As a result, new cultivation could not be considered on the subject parcel. Planning staff recommends a condition of approval reducing the overall cultivation amount (including propagation) to a maximum of 17,380 SF, consistent with County's cultivation area verification. A recommended condition of approval has been included to require the applicant to revise both the Site Plan and Operations Plan to reflect a maximum of 15,304 SF of cultivation (limited to a maximum of 2,500 SF of mixed light cultivation) with a maximum of 10% nursery space, or 1,700 SF (currently in existence), for a total of 17,380 SF of onsite cultivation. Combined, the total cultivation area and nursery space (17,380 SF) would be in conformance with the cultivation amount previously verified by the County.

Timber Conversion

Review of aerial imagery dating back to 2004 indicates the site contained an existing open area in the western portion of the property as of 2004 and timber conversion occurred northeast of this area between 2004 and 2005, with additional timber conversion occurring within the central portion of the

site between 2010 and 2012, and 2016 and 2018. It appears some conversion occurred on the subject property after the CMMLUO baseline date of January 1, 2016.

A Less Than Three Acre Conversion Exemption was issued by the California Department of Forestry and Fire Protection (CAL FIRE) in May 2016 (1-16EX-135HUM; Attachment 3) for a conversion area of 1.4 acres. Based on the Conversion Map, the proposed conversion areas appear to be consistent with the size and location of the timber conversion areas observed on the aerial imagery. As the timber conversion that occurred onsite after the CMMLUO baseline date is consistent with the Less Than Three Acre Conversion, no restocking is required. No additional tree removal is proposed or authorized by this permit.

Water Resources

Estimated annual water usage is 80,000 gallons (4.60 gal/SF) with peak demand occurring in August and September at approximately 20,000 gallons, respectively, per the table below.

Projected Water Use Table

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
0	0	1000	2500	5000	6500	10000	20000	20000	10000	5000	0

TOTAL PROJECTED WATER USE FOR THE YEAR: 80,000 GALLONS

Water for irrigation is provided by rainwater catchment and non-diversionary tank farm. The site contains an existing 50,000-gallon rainwater catchment pond and 21,000 gallons of hard-sided tank storage, with a 5,000-gallon tank dedicated for fire suppression. In addition, the applicant proposes an additional 120,000 gallons of onsite water storage in twenty-five (25) 4,800-gallon tanks for rainwater catchment, for a total of 196,000 gallons of onsite storage. 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, Pine Creek traverses the northern portion of the subject parcel. Although the respective Streamside Management Area (SMA) is not depicted on the Site Plan, the Site Plan provides setback distances from the creek to the project area, which, at the nearest point, is 620 feet from Pine Creek. Based on the setback distances and as shown on the Site Plan, all cultivation activities and respective infrastructure would be located outside of the required SMA buffer.

A Water Resource Protection Plan (WRPP; WDID 1B16448CHUM) was prepared by Timberland Resource Consultants for the subject site in August 2016 (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, three (3) items were identified requiring remediation, including planned off-stream pond improvements, covering and providing secondary containment for generator and fuel storage, and adding an on-site septic system. 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. 1600-2016-0108-R1) was issued by the California Department of Fish and Wildlife (CDFW) in July 2016 for one (1) encroachment to reconstruct the onsite pond and spillway in accordance with signed engineering plans that include specification on

compaction, fill-slope gradient, and spillway size and monitoring. Per the applicant's agent in December 2021, the pond improvements have been completed (Attachment 3).

Biological Resources

Per review of CDFW's California Natural Diversity Database (CNDDDB) in December 2021, the site is mapped within potential habitat area for the foothill yellow-legged frog (*Rana boylei*), a state-listed endangered species. Additionally, the cultivation areas are located near, but outside of, mapped Final Critical Habitat area for Northern Spotted Owl (NSO). The nearest NSO positive sighting is located approximately 0.20 miles from the cultivation area, with the nearest NSO activity center located approximately 0.49 miles away. Power at the site is currently provided by three (3) generators; however, there are plans to convert to solar and wind energy by 2026.

CDFW provided comments on the project in February 2019, in which was noted that CDFW requested pond reconstruction in 2016 to minimize the potential for pond failure, which was "built on a steep slope without permits, and shows signs of instability." A Final Streambed Alteration Agreement was issued for this work (see Attachment 3). The applicant's agent confirmed in December 2021 that the pond improvements have been completed (Attachment 3).

CDFW also expressed concerns regarding the use of mixed light within occupied NSO habitat where there have been documented NSO occurrences on the subject parcel. CDFW recommends denial of mixed light cultivation to avoid potentially significant impacts to NSO. CDFW requests that no mixed light cultivation be permitted prior to conducting two-year protocol level surveys, the applicant assume presence, implement avoidance measures such as prohibiting the use of generators, project lightings, and fans, and requests confirmation of mixed light use prior to the CMMLUO environmental baseline date of January 1, 2016. A Biological Resources Assessment was prepared by Blair Forestry Consulting in June 2020 (see Attachment 3) "...to review site conditions and evaluate the necessity for protocol level surveys associated with disturbance from cultivating cannabis." As noted in the Report, the site is likely outside of the range of marbled murrelet (*Brachyramphus marmoratus*, MAMU), and due to prior timber management in the vicinity of the project area, MAMU-preferred habitat "not is present in any abundance." The CNDDDB database indicates there are no known occurrences of MAMU near the project area; however, there are two historical NSO activity centers within 1.3 miles. In addition, within 1.3 miles of the project area, the CNDDDB records four (4) other special status species (one amphibian and three plants) – foothill yellow legged frog (*Rana boylei*), Pacific gilia (*Gillia capitata* ssp. *pacifica*), coast fawn lily (*Erythronium revolutum*), and giant fawn lily (*Erythronium oregonum*). Due to the project's location of more than 4,000 feet from the nearest Class I watercourse, detrimental effects to anadromous fisheries and the foothill yellow legged frog are not anticipated.

Regarding NSO, it is noted in the Report that NSO habitat includes mature forest patches with permanent water and suitable nesting trees and snags. Per the U.S. Fish and Wildlife Service (USFWS), competition from the invasive barred owl (*Strix varia*) is the largest threat to California's NSO population, rather than habitat encroachment. It is further noted that the landscape surrounding the site has historically undergone habitat modification due to logging, and the project area has undergone habitat modification in the form of tree removal associated with an approved Timberland Conversion Exemption. Review of CNDDDB indicates positive NSO sightings associated with the two (2) nearest NSO activity centers were only up through 1995, and there have only been negative observations beyond 1995. The Report notes that although there are no activity centers within one-quarter mile of the project area, there is suitable NSO habitat present within one-quarter mile, and "utilizing mixed-light cultivation as proposed by the landowner could create a disturbance and a light and noise attenuation plan would need to be developed." At a minimum, it is noted the project would need to comply with Dark Sky Association guidelines for Lighting Zones 0 and 1 and CDFW's 50 decibel level threshold for disturbance. Complying with these requirements would also ensure significant impacts to other species types would be minimized. Noise levels were taken onsite with a sound meter to assess two (2) generators utilized, which were below the 50 dB threshold at 100 feet or edge of suitable habitat established by CDFW.

Regarding the potential for sensitive plant species to be impacted by the project, it is noted in the Report that the potential for significant impacts is not anticipated, since the project would not result in additional ground disturbance.

A *Bullfrog Management Report 2019* was prepared by the property owner, date stamped received in September 2019 (Attachment 3), where it was noted the pond was drained in October 2019 for the pond reconstruction and no signs of bullfrogs were found at that time.

In response to CDFW comments, the 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, as requested by CDFW, the project is conditioned to follow CDFW's Bullfrog Management Plan and meet the annual reporting requirements, and shall not stock the pond with fish without written permission from CDFW. 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 Bair Road (which traverses the southern portion of the site) from Redwood Valley Road, both County-maintained. Bair Road is 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 6.5 to 7.0-mile segment of Bair Road, from Redwood Valley Road to the subject property, was prepared by the applicants in February 2018 (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 December 2017 and April 2018, any existing or proposed driveways 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 Lower Klamath and Redwood Creek Planning Watersheds, and cultivation on the subject site would occur within both watersheds. Under Resolution 18-43, the Lower Klamath Planning Watershed is limited to 161 permits and 56 acres of cultivation, and the Redwood Creek Planning Watershed is limited to 141 permits and 49 acres of cultivation. Approximately 2,880 sf is located in the Redwood Creek Planning Watershed with the remainder in the Lower Klamath. With the approval of this project the total approved permits in the Lower Klamath Planning Watershed would be 16 permits and the total approved acres would be 5 acres of cultivation, and the total approved permits in the Redwood Creek Planning Watershed would be 12 permits and the total approved acres would be 3.25 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).

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.