

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 to approve the application:

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 Fertila, LLC, project as recommended by staff subject to the recommended conditions

Executive Summary: Fertila, LLC seeks a Conditional Use Permit for 18,200-square-foot (SF) cannabis cultivation consisting of 14,560 SF of existing outdoor light-deprivation cannabis cultivation and 3,640 SF of existing mixed-light cannabis cultivation within five existing greenhouses in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, CMMLUO. The site is designated as Rural Residential (RA40) in the Humboldt County 2017 General Plan Update and zoned Unclassified (U). Three annual harvests will occur in the four existing outdoor light-deprivation greenhouses and up to five harvests are anticipated from the one existing mixed-light greenhouse, for a growing season that extends from January through December.

Processing and ancillary nursery support activities would occur onsite in one existing and one proposed 3,400-SF buildings, once permitted. Building plans prepared by a licensed engineer for the proposed facility and the existing unpermitted barn have been provided to Planning & Building. Prior to completion of the facility, processing will take place offsite at a licensed processing or manufacturing facility. Electricity is sourced from Pacific Gas and Electric Company through the solar choice program and a small emergency backup generator. A 1,000-gallon propane tank and propane generator are proposed to be added as an additional emergency power supply system north of the greenhouses. The cultivation areas and greenhouse are secured with perimeter fencing and security gates are installed along all main access roads.

Water Resources

The project includes a Special Permit for a point of diversion (POD) used for cannabis irrigation. The POD is from an unnamed headwater spring with a documented water right (Certificated H100576) that is connected to a Class III stream which is a tributary to Blue Slide Creek. Forbearance of summertime diversions is made possible by an existing 730,000-gallon rainwater catchment pond system designed by and engineer with a spillway permitted through a Lake and Streambed Alteration Agreement (LSAA) with the California Department of Fish and Wildlife (CDFW). The rain catchment pond has an interception area of approximately 14,000 SF and an adjacent interception area from the mixed-light greenhouse and its surrounding tarped area which, via a French drainage system, delivers water to the pond reservoir for an estimated total catchment area of 42,000 SF. Current water storage consists of six plastic tanks with a total capacity of 24,500 gallons and the 730,000-gallon pond. The applicant's estimated annual water use is 441,708 gallons (15.7 gallons/SF/year). A Final LSAA (LSAA 1600-2016-0396-R1) was prepared in December 2019 (**Attachment 3**) that allowed the applicant to proceed with their described project (i.e., the POD, catchment pond spillway, and six stream crossing encroachments).

The Plot Plan shows Class II and III watercourses and associated 50-foot Streamside Management Area (SMA) buffer setbacks and seven stream crossings associated with existing all-terrain-vehicle roads. Both cultivation areas are outside of the SMA buffers. The Water Resource Protection Plan (WRPP) and Site Plan prepared by Timberland Resource Consultants in 2017 (**Attachment 3**) evaluated seven stream road crossings on the site but all cultivation areas and associated facilities are more than 60 feet from the

nearest Class III watercourses. Adoption of all recommended mitigation measures in the WRPP designed to prevent continued erosion and delivery of sediment to watercourses are made a condition of approval, including the amendment of the LSAA to include the prescribed work at Stream Crossings 1 and 3. In addition, preparation of a Site Management Plan will be required to abide by State Water Resources Control Board 2019 Cannabis Policy, and this has been made a condition of approval.

Biological Resources

There are no mapped sensitive species onsite and although the nearest northern spotted owl (NSO) activity center is located approximately 2 miles from the site, lands surrounding the site are heavily forested; thus, there is potential for NSO habitat. The proposed project is to continue use of existing developed sites and the potential indirect impacts are mitigated through implementation of best management practices. Generators are proposed as backup power only and the expected daily activities are not expected to produce noise levels great enough to affect NSO. Per the applicant, generators are used onsite only for backup purposes and these will meet the performance standards for noise set by Department Policy Statement No. 16-005 clarifying CMMLUO Section 55.4.11(o), which requires noise levels be at or below 50 decibels at 100 feet or edge of habitat, whichever is closer. As a result, the project is conditioned to ensure the combination of background, generator, and greenhouse fan or other operational equipment–created noise meets the noise level threshold. Conformance will be evaluated using current auditory disturbance guidance prepared by the United States Fish and Wildlife Service.

The project has been conditioned to ensure supplemental lighting associated with mixed-light cultivation is fully contained with blackout tarps and have all outside lighting on timers or motion sensors to reduce light exposure to wildlife and their potential habitat and avoid heavy equipment operations during the NSO critical period (February 1–July 31) or perform protocol-level surveys prior to initiating that work. Furthermore, the project is conditioned to adhere to Dark Sky Association standards for greenhouse lighting and security lighting, refrain from using synthetic netting, ensure refuse is contained in wildlife-proof storage and refrain from using anticoagulant rodenticides to further protect wildlife. As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively affect NSO or other sensitive species.

Tribal Cultural Resource Coordination

There are no known tribal cultural resources on the project site. The project was referred to the Northwest Information Center and the Bear River Band of the Rohnerville Rancheria in 2017. A cultural resources study for the site was completed in December 2019 by Arsenault and Associates, indicating no tribal cultural resources were present on the site. The Tribal Historic Preservation Officer of the Bear River Band of the Rohnerville Rancheria reviewed the report and requested that the project be conditioned with the standard inadvertent discovery language. Ongoing conditions of approval are incorporated regarding the Inadvertent Discoveries Protocol to protect cultural resources and tribal cultural resources.

Access

Access to the site is via a driveway on the west side of Dutyville Road, approximately 1,051 feet from the intersection of Dutyville Road and Crooked Prairie Road, on the property known as 1075 Dutyville Road, Etersburg (APN: 221-202-001). Public Works, Land Use Division stated that the project's approval is conditioned on meeting paving requirements for intersections between county and private roads. A road evaluation report completed by the applicant is on file (**Attachment 3**).

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 Conditional Use Permit and 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 2 months later to give staff the time to complete further environmental review.