

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:

Find that the Commission has considered the Addendum to the adopted Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) as described by Section §15164 of the State CEQA Guidelines, make all of the required findings for approval of the Conditional Use Permit and adopt the Resolution approving the Nikolai Erickson Conditional Use Permit as recommended by staff subject to the recommended conditions.

Executive Summary: Nikolai Erickson seeks a Conditional Use Permit for 22,649 square feet (sq. ft.) of pre-existing outdoor cannabis cultivation, and 2,200 sq. ft. of ancillary propagation. Of the outdoor cultivation 3,612 sq. ft. will be in light-deprivation greenhouses without the use of supplemental lights, and 19,037 sq. ft. will be full-sun outdoor. Water for irrigation is sourced by rain catchment from rooftops. Annual water usage is estimated at 100,000 gallons (4.02 gal/sq. ft./year) and the applicant utilizes several water conservation methods on-site. A total of 160,000 gallons of water storage exists on-site in thirty-six hard sided tanks. Power is provided by two portable generators and will transition to full renewable energy sources by 2026.

There will be two (2) employees used on-site for cultivation activities, and the applicant will have portable toilets and hand washing stations available at the cultivation areas. The project was referred to the Department of Environmental Health (DEH) on July 10, 2017, and comments were received on November 6, 2017. DEH recommended conditional approval for the project on the condition that prior to renewal of a permit the operator shall submit receipts, or copy of contract confirming sufficient use of portable toilets to serve staff for duration of first year, or provide written assessment from a qualified septic consultant confirming a Tier 0 status for the existing onsite wastewater treatment system serving the dwelling (**Ongoing Condition B.1**).

The project will consist of 3,612 sq. ft. of outdoor light-deprivation cultivation in two (2) hoop houses, and 19,037 sq. ft. of full-sun outdoor cultivation in nine (9) designated areas. The site will also provide additional drying and harvest storage area, and will provide clones for the adjacent properties (APN's: 208-271-004 & 208-201-026), which have approved permits (PLN-11220-CUP & PLN-11241-CUP) and are operated by the applicant. In the event that one of the subject permits is transferred to a different applicant, the shared uses shall cease on the subject parcel, and the project will no longer provide storage space or clones to the adjacent properties (APN's: 208-271-004 & 208-201-026) (**Ongoing Condition B.2**). Two (2) harvests are anticipated for light-deprivation cultivation, and one harvest for full-sun outdoor. Processing at the site includes drying curing & packaging, and trimming will occur off-site at a licensed processing facility. The applicant shall have documentation kept on-site to show the use of an off-site licensed processing facility to be furnished during an annual inspection (**Ongoing Condition B.3**).

Other buildings with a nexus to cannabis include one (1) 30' x 80' Multi-Use Building (used for drying & harvest storage, and processing), two (2) 20' x 40' Harvest Storage Sheds, and two (2) 8' x 20' Cargo Containers (used for agricultural chemicals and fuel storage). There are two (2) generators used for project activities on-site, which are required to be housed in permanent locations within secondary containment. The applicant shall submit an updated Site Plan to show generator shed locations, and shall permit with the Building Division (**Condition A.5 & A7**). Generator sheds must have a concrete floor designed to incorporate containment for fuel leaks and spills which must be located on a stable surface with a minimum 200-foot buffer from Class I and Class II streams (**Condition A.7**). The project also includes

the use of two (2) ponds on-site for fire suppression needs. The project is conditioned to obtain the appropriate building permits for all structures related to cannabis (**Condition A.7**), and for any historic grading done for cannabis in excess of 50 cubic yards (**Condition A.8**).

Energy

The project currently utilizes two (2) portable generators, which are required to be housed within secondary containment, and the applicant plans to transition to solar power. The applicant is conditioned to transition to 100% renewable energy source for the project by the 2026 cultivation season, and after transition shall be allowed to keep one generator on-site for emergency backup purposes only (**Condition A.9**). The applicant shall provide an Energy Plan to the Planning Division to show how all power required by the project will be sourced by 100% renewable energy sources (**Condition A.10**).

Fire Safety & Timber Conversion

The project is in an area known to have a Very 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 July 10, 2017, and no comments were received by the agency. The project is also in the State Responsibility Area for CalFire. There was approximately 5.3 acres of oak woodlands that were cleared on the site between 2004 and 2012, in association with adding a home site, two (2) cannabis cultivation areas, and two (2) ponds. The two (2) ponds have a total storage capacity of approximately 548,000 gallons and are designated for fire protection, and there is an SRA firetruck turnaround designated on the Site Plan.

The project was referred to CalFire on July 12, 2017, and comments were received on May 22, 2018. Comments from CalFire stated that there were several existing timber conversion violations on the subject parcel, and submitted a Notice of Violation of Forest Practice Laws Letter, dated September 19, 2017. Violations included timber operations conducted without a Timber Harvesting Plan by removing timber for the purpose of converting the land to uses other than the growing of timber, approximately 5.3 acres of converted timberland for uses other than the growing of timber without filing an application for conversion, conducting commercial timber operations without a valid timber operator's license, and constructing slash piles adjacent to a Class III watercourse, placed rock in a Class II spring, and allowing the overflow channel of a pond to erode resulting in soil discharging into a Class III watercourse. Many of the violations could not be mitigated, and the only mitigation required was to remove the slash piles from the WLPZ and rock armoring the overflow channel and the applicant paid a settlement with CalFire. A subsequent letter from CalFire, dated September 7, 2018, was sent to the applicant for "Compliant and Proposed Order for Administrative Penalties".

The applicant obtained a Timber Conversion Report (TCR) prepared by Registered Professional Forester Chris Carroll, with Timberland Resource Consultants, dated June 20, 2020. The TCR was sent to CalFire for review, and re-referral of the project was requested on February 22, 2022. Comments were received by the agency on February 28, 2022 stating that the landowner has mitigated all issues that were outstanding with CalFire, and they had no comments at that time. The TCR that was prepared for the project states that tree removal consisted of the Sanitation-Salvage silvicultural prescription per 14CCR 913.3(b) of the Forest Practice Rules, and included the following recommendations that the applicant shall abide (**Ongoing Condition B.4**):

1. Dead, dying and diseased trees may be removed within striking distance (~100 feet) of Greenhouse #1, Cultivation Area #1, Cultivation Area #2, Cultivation Area #3, and the Rain Catchment Site. The stumps of the trees shall not be removed, nor shall there be any disturbance or grading that could result in timberland conversion.
2. The RPF observed scattered dead, dying, and diseased trees located throughout the property, which are greater than 100 feet from the cultivation site. To improve forest health and timberland productivity; the RPF recommends that all dead, dying, and diseased trees be removed and treated as feasible for hazard reduction.
3. No dead, dying, and diseased trees shall be harvested within a Stream Management Area and Water Board Riparian Setback. These trees shall be left standing for the beneficial uses of wildlife.
4. To eliminate fire hazard, all slash and woody debris created by the removal of dead, dying, and diseased trees shall be treated per 14CCR 914.5(b). (See page 16 of the TCR)

5. No California black oak or Oregon white oak shall be removed or damaged.
6. The tree removal project shall comply with State Water Resources Control Board Order WQ 2019-0001-DWQ. In particular, the project shall ensure compliance with the following: (1) Cannabis cultivators shall avoid damage to oak woodlands and (2) Cannabis cultivators shall apply erosion repair and control measures to the bare ground to prevent discharge of sediment to waters of the state.

The applicant has obtained an Oak Woodland Management Permit (No. 1-21EX-01321-HUM) and a Forest Fire Prevention Permit (No. 1-21EX-01319-HUM) allowing the work recommended by the RPF in the TCR.

Geologic & Seismic Safety

The project site is in an area designated to have a High Instability for Seismic Safety and Slope Stability rating. The applicant did obtain a report for Engineering Geologic Assessment of Pond Stability (EGAPS) prepared by Gary Simpson, Certified Engineering Geologist with SHN Engineers & Geologists, dated October 2, 2018. A site visit was conducted on August 17, 2018, and a previous investigation had been completed by SHN in 2013 which included subsurface investigation of the pond embankments. The EGAPS report states that there are three ponds at the project site. A stock pond ("upper" pond shown in Figure 2 of the EGAPS) was installed in 1993, prior to the applicant's ownership. The middle pond construction was initiated in 2007, and the lower pond construction began in 2011, both after the applicant obtained ownership of the property. Each of the three ponds is associated with an embankment structure, and a berm initially developed between the middle and lower ponds was breached at some point, such that the two ponds are now contiguous. The EGAPS report concluded that from a geologic standpoint the site is favorable for development of water retention structures, the existing ponds and their respective embankments are suitable for continued use as water retention structures, and it appears that the subject embankments are associated with a sufficiently low potential for failure that would impact downstream environmental resources. The applicant has had ongoing discussion with the State Water Board and the California Department of Fish & Wildlife (CDFW) regarding the final designs and requirements for the ponds. The applicant shall adhere to the final requirements determined by the State Water Board & CDFW for the on-stream ponds, and shall permit with the Building Division, in order to ensure the structural integrity of the water retention structures (**Condition A.11**).

Water Resources

Water for irrigation is provided by rain catchment utilizing gutters from the Multi-Use Building and two (2) Cabins on-site. According to the applicant's Addendum to Cultivation & Operations Plan, the buildings have the capacity to catch up to 198,497 gallons of water per year, using data of average rain fall in the area. There are fifteen (15) 5,000-gallon rain catchment tanks, thirteen (13) 5,000-gallon water tanks, and eight (8) 2,500-gallon water tanks, for a total of 160,000 gallons of existing water storage on-site. The applicant has not designated domestic tanks on the Site Plan, and shall submit an updated Site Plan to show water tanks designated for domestic separately from water tanks designated for cannabis irrigation (**Condition A.5**). The applicant utilizes water conservation methods, which lowers the total amount of water needed for the project annually to approximately 100,000 gallons (4.02 gall/sq. ft./year). The applicant plants later in the season, uses smaller plant strains that have earlier harvests, and utilizes coco fiber on plant beds for water retention.

The project originally proposed the use of two (2) "rain catchment ponds" for irrigation needs. After review with the State Water Board and the California Department of Fish & Wildlife (CDFW) it was determined that the ponds were in fact on stream ponds, and the applicant decided to transition to rain catchment from roof tops for water source. The ponds are now used for domestic, aesthetic, fire protection, and wildlife preservation and enhancement under water source under Right to Divert and Use Water Certificate D1160. As the ponds were originally used for irrigation needs, and are used for fire suppression needs associated with the proposed project, the applicant is conditioned to permit the ponds with the Building Division. As well, the applicant shall not utilize the on-stream ponds for water source of cannabis irrigation without an approved Water Right with the Division of Water Rights, and an approved permit with CDFW (**Ongoing Condition B.5**).

The site was historically enrolled in the North Coast Regional Water Quality Control Board (NCRWQCB) Order No. R-1-2015-0023, under WDID 1B16188CHUM. The site has also been enrolled in the State Water Board's General Order 2019-0001-DWQ under WDID 1_12CC417902, as a Tier 2 Moderate Risk site. The applicant has a Notice of Applicability letter from the Water Board dated July 31, 2019, as proof of enrollment in the General Order, and shows that a Site Management Plan (SMP) and a Site Erosion and Sediment Control Plan (SESCP) are required for the project. The applicant has had an SMP prepared by Green Road Consulting, dated August 5, 2019, and the applicant shall submit the SESCO to the Planning Division, and shall adhere to the recommendations within the report (**Condition A.12**). The SMP details measures required to meet compliance with the General Order, shows that all cultivation areas are located outside of any Streamside Management Areas on-site, includes road improvements required on-site, lists a total of six (6) stream crossings that require upgrades, and includes yearly winterization and site monitoring requirements. The applicant shall comply with the recommendations in Table 10. Remediation Summary Table (items MP4 & MP5 shall be completed in accordance with approval of CDFW & the State Water Board), the ongoing Monitoring Requirements listed in Table 7, and the ongoing winterization measures outlined in the SMP (**Condition A.13 & Ongoing Condition B.6**).

The project is within the Mad River Planning Watershed, and the application was sent out for referral to the Humboldt Bay Municipal Water District (HBMWD) on November 20, 2018. Comments were received by the agency in a letter dated December 5, 2018. The HBMWD letter states concerns regarding the ponds being a potential species problem, requested that the County verify that the applicant has a water right for the potential diversion, and stated that the project may be subject to full environmental CEQA review. The applicant is required to continue working with and adhere to the final requirements determined by the State Water Board & CDFW for the on-stream ponds, and is conditioned to obtain a biological assessment to address the potential presence of invasive catfish, as well as adhere to any bullfrog management plan required by CDFW. The project will no longer use the ponds for cannabis irrigation, and the applicant only uses the ponds for domestic and fire suppression needs under domestic Right to Divert and Use Water Certificate D1160. Lastly, after continued review and analysis of the project, it has been determined that the project falls under the Mitigative Negative Declaration that was prepared for the Humboldt County Commercial Medical Marijuana Land Use Ordinance (CMMLUO), and no Initial Study was requested specific to the proposed project.

Biological Resources

The project site does contain habitat for Oregon goldthread, according to the California Natural Diversity Database (CNDDDB) Resource Map, and the nearest Northern Spotted Owl (NSO) activity center is located approximately 1.86 miles from the nearest cultivation site. As the site is for pre-existing activities and no new development is proposed, no Biological Assessment was required for the proposed project. The project was referred to CDFW on July 10, 2017, and comments were received on August 21, 2017. Comments from CDFW included: a request to put the project on hold until a Final Lake or Streambed Alteration Agreement for the project was obtained, stated that on-site review confirmed that the ponds are hydrologically connected to surface waters and are jurisdictional with CDFW, requested a biological assessment of the parcel with specific attention to the potential presence of invasive catfish in the ponds, requested condition of approval in regards to noise pollution.

The applicant has obtained a Streambed Alteration Agreement (SAA 1600-2019-0559-R1) with CDFW for the instream work required to upgrade five (5) stream crossings on-site (STX1-STX4, STX6). The applicant shall complete all the work described in, and shall adhere to the conditions outlined in the SAA 1600-2019-0559-R1, for work association with STX1-STX4 & STX6 (**Condition A.14**). Additional work outlined in SAA 1600-2019-0559-R1 include remediation work associated with the on-stream ponds (Reservoir outlet 1, Reservoir outlet 2, STX5, and Bypass culvert), which are not authorized under the Agreement. The applicant is continuing to work with CDFW and the State Water Board on the final design and requirements for the on-stream ponds. The applicant shall obtain a Final Streambed Alteration Agreement made with CDFW, with an approved Remediation Plan related to all on-stream pond work, shall submit to the Planning Division, shall complete all the work described in the Final SAA and approved Remediation Plan, and shall adhere to the conditions outlined in the Final SAA (**Condition A.15**). As well, the applicant shall obtain a biological assessment to specifically address the potential presence of

invasive catfish existing in the ponds, shall submit to the Planning Division, and shall adhere to any recommendations made within the report (**Condition A.16**). Lastly, the applicant shall adhere to any Bullfrog Management Plan required by CDFW for the ponds on-site (**Ongoing Condition B.7**).

The project does include the use of two (2) generators on-site, and the applicant is conditioned to transition to 100% renewable energy source by 2026. The applicant is conditioned to house all generators within permanent shed locations, and all generators shall not exceed 50 decibels at 100 feet or the nearest canopy, whichever is closer (**Ongoing Condition B.8**). Additionally, the project is conditioned to adhere to International Dark Sky Standards, and any supplemental lighting used within propagation nursery greenhouses shall not escape between the hours of dusk and dawn (**Ongoing Condition B.9**).

The applicant obtained a Wetland Delineation Report (WDR) that was prepared by Wildlife Biologist Jack Henry, with Timberland Resource Consultants, dated July 2019. A site visit was conducted on May 10, 2019, where two sample points were assessed for the three wetland parameters: hydrology, hydrophytic vegetation, and hydric soils. The purpose of the delineation was to accurately assess if the embankments of an existing pond encroached within the potential wetland on-site. There is an existing spring head northeast of the ponds, and was the subject of the assessment. One sample point met all three parameters that define a wetland. The WDR concludes that there is a freshwater emergent wetland present on-site, and the existing pond does not encroach within its delineated boundary. The wetland area is shown in the Wetland Delineation Map of the WDR, and has been added to the applicant's Site Plan showing an appropriate 50-foot buffer.

Tribal Cultural Resource Coordination

The project is located within the Bear River Band tribal aboriginal territory. The project was referred to the Bear River Band THPO and the Northwest Information Center (NWIC) on July 10, 2017. The NWIC responded with a recommendation that the lead agency contact the local Native American tribe(s) regarding tradition, cultural, and religious heritage values. A response was received from the Bear River Band THPO on July 31, 2017, requesting the applicant adhere to Inadvertent Discovery Protocols as a condition of approval (**Informational Note B.3**).

Access

The project site is accessed by Canyon Road, from Bear Creek Road, from Hwy 36. Canyon Road and Bear Creek Road are non-county maintained roads, and the project was referred to the Department of Public Works on July 10, 2017. Comments were received by the Department on August 10, 2017, recommending that the project be referred to CalTrans. The project was referred to CalTrans on July 10, 2017, and no comments were received by the agency. The applicant has submitted a Road Evaluation Report form dated October 6, 2017, which only lists Bear Creek Road for the access road, but includes Canyon Road in the route map. The applicant's RER self-certifies that both roads are developed to the equivalent of a Category 4 road standard. The access road has been determined to meet the functional capacity needs for the project.

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 24.84 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 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.