

**Recommended Commission Action:**

1. Describe the application as part 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 Soul Arc Solutions, Inc., project as recommended by staff subject to the recommended conditions.*

**Executive Summary:** Soul Arc Solutions, Inc., seeks a Conditional Use Permit for continued cultivation 18,092 square feet (SF) of existing cannabis operation utilizing 8,000 SF mixed light techniques with the remainder 10,092 sf utilizing outdoor cultivation techniques, in accordance with Humboldt County Code 314-55.4 of Chapter 4 of Division 1 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 has a combined zoning of Agriculture Exclusive (AE) and Timber Production Zone (TPZ) and minimum density site area is 40 acres. Cultivation occurs in 18 greenhouse structures with nine (9) greenhouse structures toward the north-eastern end of the parcel and another nine (9) in the central-eastern area of the parcel. These cultivation areas primarily reside within the AE zone. Drying and curing would be completed onsite in a proposed 1,000-square-foot facility, with other processing (trimming) occurring off-site at a licensed facility. The applicant is required to provide portable bathroom and handwashing facilities for the life of the project or until there are facilities that comply with the Americans with Disabilities Act (ADA) onsite. A maximum of 6 employees would be on-site during peak operations. Electricity is sourced from generator power with solar power proposed.

The applicant estimates 216,700 gallons of water is required to meet operations needs with peak usage occurring July through September averaging 48,667 gallons each month (11.98 gal/SF/year). As described, water for cannabis cultivation irrigation is provided by a surface point of diversion and the onsite pond. There is a total of 160,000 gallons of water storage provided by hard-sided tanks and additional water storage is provided by a 130,000-gallon pond on onsite. The use of the point of diversion will be supplemented by a rainwater catchment system comprised of an onsite pond. The average rainfall for the project area is 56.9 inches, based on averaging rainfall values from 2011 through 2020 as recorded by PRISM Climate Group. Impermeable surfaces such as roofs, driveways, lined ponds and, etc. in general allow for about 620 gallons of rainwater catchment per 1,000 SF for every 1-inch of rainfall or .62 gallons per 1 SF. With a total impermeable rainwater catchment area of 5,162 sf, and an average rainfall amount of 56.9 inches, the sites potential capture amount totals 182,105 gallons per year on average or 84% of the estimated water needs annually. Rainwater that is captured onsite will be stored in the existing twenty-two (22) 5,000-gallon hard sided tanks, one (1) 50,000-gallon hard sided tank, and the 130,000-gallon catchment pond. Storage totals 290,000 gallons, which means the project has an additional 73,300 gallons (34%) of water storage above the annual water use.

The water diversion approved under the State Water Resources Control Board (SWRCB) Small Irrigation Use Registration (SIUR) Certificate H100175 (Registration #H501774); the priority of this right dates from October 19, 2017. The California Department of Fish and Wildlife (CDFW) Lake and Streambed Alteration Agreement (LSAA) and SWRCB SIUR dictate that diversion from any POD must be confined to November 13 through March 31<sup>st</sup>. Both the SWRCB Policy and the signed LSAA require that the USGS gage 11469000, located at the Mattole River near Petrolia be checked for instream minimum flows prior to diversion. No water shall be diverted unless the State Water Board's Online Cannabis Compliance Gage Mapping Tool shows the "Diversion is Authorized" for the address. From December 15<sup>th</sup> through March 31<sup>st</sup>, no

water shall be diverted for storage unless the flow exceeds 1580 cubic feet per second. The SIUR allows for the appropriation of 0.62 acre-feet (202,028 gallons) of water annually for cannabis cultivation. The total storage of diverted water shall not exceed the annual diversion amount as described above. Water from the point of diversion is stored in both tanks and the pond. Conditions of the approval for SUIR and for this permit require the diversion to be metered to ensure the amount of diversion is within the limits allowed by the SUIR. Additionally, conditions of approval require the water to be metered when irrigation occurs to further demonstrate the amount of water used for irrigation from storage.

The 130,000-gallon pond was proposed for development under the Final Streambed Alteration Agreement (Notification NO. 1600-2016-0332-R1) as an off-stream pond and constructed in 2017 at its current location. On March 8, 2021, Homan and Associates conducted an assessment of a spillway adjacent and connected to the pond in which they determined that there was flowing water approximately 40 feet below the head of the spillway channel. The topography of the spillway has indication that the channel was clearly created by fluvial process, and the drainage is hydrologically connected to a Class III drainage that flows into the Mattole River. The applicant has submitted an extension to the FSAA for the pond with the updated understanding that the pond is to be considered an existing diversion from an unnamed tributary to the Mattole River. With the current understanding that the pond is hydrologically connected to surface waters of the state, the project is prohibited from the use of the pond as a diversionary source of irrigation until the applicant can provide proof of completion for engineering upgrades that would disconnect the pond from surface waters of the state as originally intended and described within the original FSAA.

Cultivation relocation occurred in 2017, which included relocating approximately 5,750 SF of cultivation that was grown in a location with slopes greater than 30%, and within 100 feet of three separate Class III watercourses. The cultivation was relocated to the northern cultivation site, a pre-existing open meadow and reconfigured to be cultivated within eight (8) greenhouses utilizing light deprivation techniques. The light deprivation greenhouses are expected to yield two (2) harvests per year. Because historic cultivation was mainly full sun outdoor, this permit does not authorize the use of fans or dehumidifiers in the greenhouses that contain the reorganized cultivation areas. Per the Remediation Plan prepared by Mother Earth Engineering dated May 2018, the former grow sites have had all debris removed and were fully decommissioned (Attachment 3). The report recommends ongoing revegetation and erosion control protocols which requires annual monitoring, with additional installation of erosion control and seeding/plantings on an as-needed basis per the regular self-inspections. The project is conditioned to adhere to the recommendations made in the remediation plan to ensure erosion control measures are consistent and perform as intended.

A review of the Biological Information and Observation System (BIOS) through the CDFW which includes layers depicting biological resources identified by the California Natural Diversity Database (CNDDB) depicts no endangered or protected species onsite as of October 5, 2021. A Northern Spotted Owl (NSO) activity center was depicted as 0.44 miles from the nearest cultivation area onsite and the nearest positive sighting was 0.1 miles (520 feet) away. The cultivation site that shares the 0.1 distance from NSO is located in an open meadow site, bordered by mixed coniferous forest with potentially high-quality nesting and or roosting NSO habitat. The California Department of Fish and Wildlife (CDFW) sent a Notice of Violation to the Applicant August 9, 2018, in which the violations were noted from a site visit that occurred July 12, 2017, which includes violations for an unpermitted water diversion, unpermitted stream crossing, and a section of hydrologically connected road surface. CDFW has additionally provided a referral response dated September 9, 2018 (Attachment 4), requesting additional information. Staff responded to CDFW comments on October 8, 2021 (Attachment 4) that included providing updated information including the CDFW original comments, Streambed Alteration Agreements, Site Management Plan (SMP) Site Plan, NSO Report, Road Evaluation, SMA pond review, and updated project description. The project has been conditioned to adhere to the recommendations made by CDFW aside from the request that the project transition to full sun outdoor. The northern cultivation area is conditioned to prohibit the use of generators or supplemental lighting for the protection of NSO as described below. The project is additionally conditioned to prohibit the use of lights, fans, dehumidifiers,

or heaters in the northern cultivation sites as these sites were reorganized after the established CEQA baseline.

A Northern Spotted Owl Habitat Impact Assessment was prepared March 10, 2021 (see Attachment 3) with the onsite assessment occurring on March 8, 2021. The assessment specifically focused on the potential the northern cultivation site has to impact NSO. A total of fourteen 14 owl surveys were performed 8 of which occurred between March 28, 2018, and August 23, 2018, with the remaining six (6) surveys performed between April 10, 2019, and July 18, 2019. The report concludes with mitigations for light and noise disturbance implemented, no significant impacts to the NSO are expected to occur. The report recommends that the landowners follow measures to minimize disturbance to any potential NSO, it is recommended that the landowners do not use any first or second-generation anticoagulant rodenticides in the cultivation area, to minimize any possible exposure to NSO through secondary consumption of prey species in the area. Additionally, all noise disturbance should be minimized, the use of power tools or other temporary sources of noise disturbance should occur only during daylight hours, when NSO are not likely to be foraging (in the northern cultivation area). Conditions of approval require the applicant to adhere to and implement the recommendation in the report.

Per the operations plan submitted by the applicant, no generators or supplemental lights are planned for use at the northern cultivation site, and as a result will not contribute to any significant sources of noise or light disturbance to sensitive wildlife species. Additionally, the applicant is in the process of transitioning from using generators to solar energy at the additional sites on the parcel. The applicant has since entered into an additional LSA with CDFW (Notification No. 1600-209-0859-R1) which includes approval for the replacement of an undersized culvert, rock armoring the outlet of an existing culvert, and for the work required to stabilize a recent landslide adjacent to a Class III watercourse. Work for this stabilization may include removal of remaining debris from the failed area, removal of trees and stumps from the area within ten feet of the headscarp of failure, excavation, compaction of fill, rock armoring of the inboard road ditch, and erosion control measures as necessary to minimize erosion of the landslide feature. This new LSA was authorized 1/16/2020.

As a result, the project is conditioned to ensure the combination of background, generator and greenhouse fan or other operational equipment 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. Additionally, any grading and earthwork activities like the re-engineering of the onsite pond, will be conducted by a licensed contractor in accordance with approved grading permits outside of the NSO breeding period February 1<sup>st</sup> – July 31<sup>st</sup>. Sound measurements are to be performed by a CDFW or County Staff Representative before commercial activities can commence that meet the described requirements. Furthermore, the project is conditioned to refrain from using synthetic netting for erosion control measures, ensure refuse is contained in wildlife proof storage and refrain (prohibited) from using anticoagulant rodenticides to further protect wildlife, adhere to the Bullfrog management plan (Attachment 3). 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.

The applicant submitted a Less Than Three Acre Conversion Mitigation Plan prepared by Mad River Properties, Inc. received May 25, 2018. The report includes a discussion of timber conversion occurring in 2012, 2013, and 2017, totaling 2.40 acres of timber conversion of which 0.33 which is not consistent with the Mitigated Negative Declaration (MND) adopted by the County on September 13, 2016, prepared for adoption of the CMMLUO. The MND assumed there would be no additional timber conversion associated with cannabis cultivation after January 1, 2016. Three areas of conversion are noted in the report identified as Site A, Site B, and Site C. Site A was originally converted in 2012 and further expanded in 2013 which is currently occupied by multiple permanent and temporary greenhouses, two permanent structures, a temporary structure, water tanks, a generator, and a pond. Site B was first converted in 2012 for cannabis cultivation by grading a flat in the grassland to accommodate two water bladders. Currently a greenhouse occupies the site. Lastly, Site C (north-eastern cultivation area) was converted in 2017 by grading a flat in grassland for cannabis cultivation within an area zoned Agriculture Exclusive.

The report noted that the effects these projects had on the forest were too small and insignificant to be considered a conversion. The report included the identification of 21 Road Points that at the time were in conflict with the Forest Practice Rules or have potential to cause environmental damage. The report does not include a restocking plan as would be required for the conversion occurring after January 1, 2016, thus, as a condition of approval, the applicant will provide an addendum to the Less than Three Acre Conversion Mitigation Plan prepared by a Registered Professional Forester (RPF) to specifically address the approximately 0.33 acres of timber land converted after 2016. The addendum will contain discussion of the ecological value of the converted forest land with specific discussion of the habitat value for Northern Spotted Owl (NSO). The report will include the number and species of trees removed. The restoration plan must include NSO habitat enhancement at a 3:1 ratio to the area converted which may include removal of invasive species, thinning, and restocking and shall include monitoring and reporting components to ensure success of the recommended remedial actions. The report will be submitted for approval to the Planning Department and will be evaluated in consultation with the California Department of Fish and Wildlife.

Two streams that are tributaries to the Mattole River are located on the property. A Site Management Plan (SMP) was prepared by the applicant (Attachment 3) that includes a list of recommended best practices for erosion control, monitoring irrigation volumes to prevent runoff, and utilizing appropriate facilities for the storage of cultivation related materials consistent with the State Water Resources Control Board (SWRCB) and North Coast Regional Water Quality Control Board (NCRWQB). The applicant is enrolled in the NCRWQB and has provided documentation showing adherence to the cannabis general order WQ2019-0001-DWQ General Waste Discharge Requirements for Dischargers of Waste Associated with Cannabis Cultivation Activities (General Order) under SWRCB Cannabis Cultivation Policy (WDID\_12CC402929 Effective as of 05/22/2019). The applicant has a Final Streambed Alteration Agreement (Notification No. 1600-2016-0332-R1) signed September 29, 2016, with the California Department of Fish and Wildlife (CDFW) for the existing point of diversion located onsite within a tributary to the Mattole River for domestic and irrigation uses onsite (Attachment 3).

The project is located in the Bear River Band of Rohnerville Rancheria and the Intertribal Sinkyone Wilderness Council. The project was referred to the Northwest Information Center, Bear River Band, and the Intertribal Sinkyone Wilderness Council on 5/30/2018. A Cultural Resources Investigation was prepared in June 2017 by Alta Archaeological Consulting. Per the Report, no cultural resources were identified within the project area as a result of the fieldwork conducted on May 9, 2017. The project as designed is not anticipated to have an adverse effect on significant historical resources. Response from the Bear River Band of the Rohnerville Rancheria indicates that a previously recorded cultural site exists on the property, the recommendation was that inadvertent discovery protocol should be included as a condition of project approval. Additionally, further archaeological consultation will be required for any further developments on this property outside the scope of the proposed project. These recommendations have been included as conditions of approval for this project.

The subject property, APN 108-012-010, is accessed off of a private access road from Wilder Ridge Road. A Road Evaluation was prepared by the applicant which included a detailed overview of internal access roads that includes depictions of 39 road points to provide context to the conditions of the road. The Road Evaluation indicates the private road is developed to the functional equivalent of a road Category 4 standard and can accommodate the traffic generated from the project. The Public Works Department recommends conditional approval provided all driveways and private road intersections onto the County Road be maintained in accordance with the County Sight Visibility Ordinance and that the intersection of Wilder Ridge Road and the private access road be improved to pave the private access road for a minimum width of 20 feet and a length of 50 feet where it intersects Wilder Ridge Road. The project includes recommended conditions of approval to adhere to the conditions requested by public works.

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 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 two months later to give staff the time to complete further environmental review.