

Recommended Zoning Administrator 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 Zoning Administrator 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 Special Permits and adopt the Resolution approving the Pacific Madrone Timber, LLC Special Permits as recommended by staff subject to the recommended conditions.

Executive Summary: Pacific Madrone Timber, LLC, seeks a Special Permit for 6,682 SF of pre-existing outdoor cannabis cultivation. Water is sourced from a rain catchment pond and from a stream diversion under Water Right Certificate H100228. A Special Permit is being requested to approve the continued use and maintenance of a stream diversion within a streamside management area (SMA). Anticipated annual water usage is 133,350 gallons. Existing water storage includes one (1) 180,000-gallon rain catchment pond, two (2) 2,500-gallon hard water tanks, and two (2) 1,550-gallon hard water tanks, for a total of 188,100 gallons of water storage. The applicant is requesting a Special Permit for a setback reduction of cultivation areas within 150 feet of a perennial wetland on-site, and proposes to relocate all cultivation within 100 feet of the wetland to outside of 150 feet. Consultation with the Water Board and California Department of Fish & Wildlife (CDFW) has been conducted for the setback reduction request, and a recommendation of conditional approval was received. An additional Special Permit is being requested to reduce the 600-foot setback to Public Lands (SRNF). Power is sourced by a solar array and one (1) portable generator that is housed in the two-story drying building.

Cultivation area existing on-site prior to January 1st 2016, was confirmed to be a total of approximately 8,926 SF measuring around the perimeter of six (6) distinct cultivation areas. Measurements were taken utilizing 2010 imagery from Secure Watch. The applicant is currently measuring the area of individual plants utilizing the circumference of cages used to hold the plants with additional space included as a buffer, and for smaller plants measuring area of a circumference around t-posts with additional space for a buffer. As the total cultivation area being proposed is less than what was measured from 2010 Secure Watch imagery, no expansion has occurred. The applicant shall utilize distinct barriers around individual plants (i.e. cages, string, etc.), that total the square footage shown on the Site Plan, to ensure that the plants do not grow outside of the measured cultivation area for each individual plant (**Ongoing Condition B.1**).

Plants are started from seeds on-site within a 600 SF seed propagation area, or will come from purchased clones. The farm is owner-operated and no employees are used. All processing will occur on-site, trimming will occur in the Processing Building, and drying will occur in the two-story drying building. The project was referred to the Department of Environmental Health (DEH) on August 30, 2017, and comments were received on April 9, 2018. Comments from DEH included a recommendation of conditional approval based on the condition that the three (3) pit privies be discontinued and decommissioned, or obtain a permit for a composting toilet from DEH (**Condition A.6**). There is an existing unpermitted septic system near the processing building, and the applicant shall either permit the existing septic system or install a new one and permit with DEH (**Condition A.7**).

The project includes 6,682 SF of outdoor cannabis cultivation, which will occur within three (3) cultivation areas on-site. The project was referred to the Building Division on August 30, 2017, and a Building inspection was conducted on December 16, 2017. Comments from the Building Division included a recommendation of approval based on the condition that all required grading, building, plumbing

electrical and mechanical permits and or Agricultural Exemption are obtained. The applicant is conditioned to obtain building permits for all existing and proposed structures with a nexus to cannabis, including but not limited to: one (1) outdoor greenhouse, one (1) tool shed, one (1) two-story drying building, one (1) processing building, and the existing solar arrays (**Condition A.8**). The applicant shall also permit all historic grading that occurred on-site in excess of 50 cubic-yards (**Condition A.9**).

The subject legal parcel is comprised of two (2) Assessor Parcel Numbers (APN's), which are inaccurately shown on the Humboldt County Web GIS. A request was made for verification of the southwest corner of the legal parcel. An email was received on August 30, 2018, from Land Surveyor Tony O'Rourke with Trinity Valley Consulting Engineers Inc. (TVCE), stating that a site visit was conducted to verify the location of the southwest corner ("AP 6/3 of Tract 44/45" Section 14/13, Township 5 North, Range 5 East, H.M), and that the plot plan created by TVCE shows accurate parcel lines.

Setbacks

The project site is located adjacent to the Six Rivers National Forest (SRNF), and the applicant is seeking a Special Permit to approve a setback reduction to public lands to approximately 225 feet, as determined by TVCE. The project was referred to the SRNF on May 10, 2018, and no comments have been received.

The adjacent public land is subject to the Land and Resource Management Plan - Six Rivers National Forest 1995 (L&RMP). The project is consistent with the L&RMP because the cultivation activities will minimize impacts to biological resources and wildlife through measures to reduce potential light and noise impacts. The applicant obtains power mainly from an on-site solar array, and all cultivation is full-sun outdoor and no lights are used. The project is consistent with recreational use on public lands as the proposed project is not located near developed campgrounds, trails, or other related facilities. The project site is more than 600 feet from any school, school bus stop, church or other place of religious worship, or Tribal Cultural Resource.

The project also includes a Special Permit to request a setback reduction for cultivation occurring within 150 feet of the perennial wetland on-site. The applicant has communicated with the Water Board and CDFW regarding the proposal to relocate cultivation within 100 feet of the wetland outside of 150 feet of the wetland. Both agencies have communicated with the applicant that this is acceptable with conditional approval, which is discussed further in the Water Resources and Biological Resources sections below.

Water Resources

The project sources water from a 180,000-gallon rain catchment pond on-site, which is supplemented with a point of diversion from a stream on-site, under Water Right Certificate H100228. The applicant shall permit the rain catchment pond with the Building Division (**Condition A.9**). The Water Right allows the diversion of up to 0.23 acre-feet of water (74,945 gallons) per year, and the applicant shall abide by all conditions and limitations set forth within the Right to Divert & Use Water Certificate H100228 (**Ongoing Condition B.2**). The applicant anticipates using approximately 133,350 gallons annually, and there is a total of 188,100 gallons of water storage on-site in one (1) 180,000-gallon pond, two (2) 2,500-gallon hard tanks, and two (2) 1,550-gallon hard tanks. One (1) of the 2,500-gallon tanks has been designated for fire suppression and domestic uses. There are two (2) Class II streams, one (1) perennial wetland, and one (1) stream crossing on the subject parcel.

The site was historically enrolled in the North Coast Regional Water Quality Control Board's Order No. R1-2015-0023, under WDID: 1B16462CHUM. The applicant has had a Water Resource Protection Plan (WRPP) prepared by Timberland Resource Consultants (TRC), dated July 17, 2018. The WRPP states that there are two (2) Class II streams on the property, tributary to the South Fork Trinity River, and that the project had met all of the standard conditions required by the Order. Since the applicant was enrolled in the Regional Order No. R1-2015-0023, they are grandfathered into the Regional Order setback requirements for SMA's.

The applicant has also enrolled in the State Water Resources Control Board's (SWRCB) General Order (No. WQ 2019-0001-DWQ) for Waste Discharge Requirements and Water Quality. A Notice of Applicability letter dated July 31, 2019, shows proof of enrollment under WDID 1_12CC417987. The project is required to have a Site Management Plan prepared to outline on-site measures required to meet the standard conditions of the SWRCB's General Order. The applicant shall submit to the Planning Department the final Site Management Plan, and shall adhere to the measures and ongoing recommendations within the final SMP (**Condition A.10 & Ongoing Condition B.3**).

The project was referred to the US Army Corps of Engineers on August 30, 2017, and comments were received from the agency on March 23, 2018. Comments from the agency included that all proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps pursuant to Section 404 of the Clean Water Act, and that the proposed work may be within their jurisdiction. Comments further recommended that a jurisdictional survey (delineation) be conducted for verification of wetland location. As the project is not proposing to fill or dredge the perennial wetland on-site, the project is not within the jurisdiction of the US Army Corps of Engineers.

A Wetland Delineation Report was prepared by Wildlife Biologist Jack Henry with TRC, and data collection was conducted on May 20, 2019. Four sample points were assessed for three wetland parameters: hydrology, hydrophytic vegetation, and hydric soils. Of the four sample points assessed, two of the four met all three parameters that define a wetland. It has been determined that the wetland on-site is a perennial wetland. The perennial wetland on-site has a Class II stream that runs through it. The applicant is requesting an additional Special Permit for a setback reduction from the 150-foot SMA setback to perennial wetlands, as required by the Humboldt County Streamside Management Areas and Wetlands Ordinance and the State Water Board General Order. Communication with the North Coast Regional Water Quality Control Board on their required setback from the wetland, determined that the applicant would need to be outside of the 100-foot setback from Class II streams as required by the Regional Order (No. R1-2015-0023), and all relocated cultivation will need to be located outside of the 150-foot setback required by the State General Order (No. 2019-0001-DWQ) for perennial wetlands. The applicant plans to relocate cultivation to existing cultivation areas, and no new ground disturbance is proposed as part of this proposal.

Fire Hazard

The parcel is located in an area known to have a Very High Fire Hazard Severity, and is not located within local fire response area. The applicant shall cause to be recorded an "ACKNOWLEDGMENT OF NO AVAILABLE EMERGENCY RESPONSE AND FIRE SUPPRESSION SERVICES" for the parcel(s) on a form provided by the Humboldt County Planning Division. Document review fees as set forth in the schedule of fees and charges as adopted by the Board of Supervisors will be required (**Condition A.11**). The project is within the State Responsibility area for CalFire, and the applicant has designated minimum 2,500-gallon water tank for fire suppression, and a firetruck turnaround. The applicant shall also ensure that the fire suppression tank is equipped with an appropriate hydrant/fire valve as required by CalFire (**Condition A.12**).

Timber Conversion

The applicant had a Timber Conversion Report (TCR) prepared by Timberland Resource Consultants, dated June 26, 2017. The TCR calculated that approximately 0.45 acres was converted on the site between 1998 and 2016 which is less than 3-acre maximum, and gave a recommendation that the applicant treat all slash piles and log decks as soon as possible using one of the following methods: burying, chipping and spreading, piling and burning, or removal from site (**Condition A.13**). The project was referred to CalFire on August 30, 2017, and comments were received stating that illegal conversion had taken place on-site, and that CalFire cannot support the project. Updated comments were received from the agency on December 22, 2017, stating that CalFire would not be pursuing any enforcement action at that time and mitigation proposed by the RPF was deemed acceptable.

Biological Resources

The project is located approximately 0.45 miles to the nearest known Northern Spotted Owl (NSO) activity center. According to the California Natural Diversity Database (CNDDDB) for rare and endangered species, the project site may contain habitat for northern goshawk and the foothill yellow-legged frog. The applicant had a Biological Assessment Report (BAR) prepared by Wildlife Biologist Jack Henry with TRC. A site visit was conducted on May 20, 2019, and there were no observations of bird species during the site visit. Species that were observed on-site during the site visit included Northwestern Pond Turtle, and American Bullfrog. The BAR included an assessment for NSO on the site, and it was determined that the expected daily activities at the site would not produce noise levels great enough to impact potential NSO's present within the biological assessment area. Mitigation measures recommended in the BAR for NSO included: restricting the use of heavy equipment (i.e. road graders, dozers, dump trucks, excavators, back-hoes, or any mechanical equipment that generates noise greater than 70 dB(A) at 23' or 7 meters) between February 1st and July 31st, or survey for NSO's per the Protocol for Surveying Proposed Management Activities that may impact NSO, USFWS 2012. The applicant shall adhere to the following recommendations within the BAR (**Ongoing Condition B.4**):

- Adhere to all conditions in applicable management plans and monitoring reports as required by Order WQ 2017-0023.
- Apply for a Special Permit through Humboldt County if cultivation remains within the riparian buffer or confirm cultivation relocation with County personnel.
- Adhere to all conditions within the final CDFW Lake and Streambed Alteration Agreement.
- Perform floristic surveys if any additional ground disturbance or habitat conversion is proposed.
- If operations with the potential to significantly disturb (e.g. heavy equipment operations) NSO are proposed during the critical period between February 1st and July 31st, NSO surveys should be performed per specifications stated in Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls (2012) before operations occur. Surveys should be performed per Section 9.0 Surveys for Disturbance-Only Projects.
- Continue implementation of non-chemical based strategies for the management of nuisance rodent interactions.

The applicant has also obtained a Biological Assessment for SMA Reduction (BASR) from Wildlife Biologist Jack Henry with TRC. The BASR states that the applicant proposes to relocate approximately 730 square feet of cultivation area that exists within 50 to 100 feet of the perennial wetland buffer, and development within the SMA may be characterized as low-intensity. After consultation with CDFW, the total square footage to be relocated is 2,700 SF, as shown on the Site Plan. Except for the structures and road surfaces, no area has been paved, rocked, or compacted, there are no signs of any active sediment discharge occurring at the cultivation site, and the WRPP has not identified any mitigation necessary to protect water quality. The BASR continues to state that the development and operation of the existing cultivation site has not resulted in any direct impacts to the wetland, the project does not include any proposal to fill or remove any portion of the wetland, and the project as is existing is unlikely to have directly or indirectly impacted the wetland feature of the value of the SMA. Additionally, the BASR states that the project is operated solely by the landowner and does not generate significant levels of noise that may disturb nearby special status wildlife, and given these conditions the project is unlikely to have disturbed wildlife within proximity of the project. The applicant utilizes organic nutrients and strictly follows agronomic rates recommended on the labeling, and given the low intensity of activities at the site, the conscious use of plant nutrients, and the low risk of baseline conditions, nutrient runoff is not expected to impact the water quality within or downstream on the wetland during saturated conditions. The BASR states that the reduced setback is supported by water quality regulations, and site conditions in chorus with cultivation strategies reduces the risk of nutrient discharge.

The applicant has obtained a Streambed Alteration Agreement (SAA 1600-2016-0432-R1) with CDFW. The SAA lists a total of four (4) points of diversion, two (2) of which have been discontinued. The applicant is working with CDFW to update the Streambed Alteration Agreement. The applicant has submitted the final Streambed Alteration Agreement with CDFW to the Planning Division (SAA No. EPIMS-HUM-29212-R1C), and the applicant shall adhere to the work and restrictions outlined in the final Agreement (**Ongoing Condition B.5**).

A site visit was conducted with staff from the Planning Division and CDFW, on May 24, 2022, to allow CDFW to assess the proposal for a setback reduction from the perennial wetland SMA. Comments from CDFW were received on July 5, 2022, supporting the setback reduction with conditional approval. The applicant shall adhere to the following recommendations made by CDFW (**Condition A.14**):

- The applicant shall prepare a Streamside Management Area Protection Plan, and submit to the Planning Division and CDFW. The plan shall include details on suitable measures to mitigate impacts to the wetland, and should include the following:
 1. Control and/or shade out Himalayan blackberry and other non-native invasive plant species that occur along the wetland edge by planting native riparian shrub species;
 2. Limit the introduction of nutrients and non-native materials to the wetland by only planting in native soil within the 150-foot SMA and not using synthetic or salt-based amendments;
 3. Control bullfrogs;
 4. Remove the pre-existing diversion wall along the streambed to restore more natural flow conditions (located at 40.8107,-123.5761);
 5. Include a monitoring plan with photo documentation showing completion of the planned mitigation activities.

No lights are proposed as part of the project. The applicant is required to comply with International Dark Sky Standards, and shall ensure that all noise levels do not go above 50 decibels at 100-feet or any tree line when noise generating equipment are in use (**Ongoing Conditions B.6 & B.7**).

Tribal Cultural Resource Coordination

The project site is located in the Hoopa and Tsnungwe Aboriginal Ancestral Territories. The project was referred to the Northwest Information Center (NWIC), the Hoopa Tribe, and the Tsnungwe Council on August 30, 2017. The NWIC replied on November 20, 2017, recommending that the local Native American tribes be contacted regarding traditional, cultural, and religious heritage values. The Tsnungwe Council commented on May 18, 2018, stating that they had no concerns about the project. The applicant shall adhere to Inadvertent Discover Protocols, and shall cease all work in the immediate area and within a 50-foot buffer of the discovery location. A qualified archaeologist and the appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the applicant and the lead agency, develop a treatment plan in any instance where significant impacts cannot be avoided (**Informational Note 3**).

Access

Access to the project site is from County maintained Friday Ridge Road, and then utilizes US Forest Service roads to the project site. The project was referred to the Department of Public Works on August 30, 2017, and comments were received on February 23, 2018, recommending that the project be referred to the US Forest Service. The project was referred to the Six Rivers National Forest on May 10, 2018, and no comments were received. No upgrades are required on US forest service roads, and the applicant shall be aware that the Federal Government considers the cultivation of cannabis to be an illegal activity (**Informational Note 4**). The farm is owner operated with no employees, and the applicant anticipates on average two vehicle trips per week, and a maximum of two (2) vehicle trips per day. No increase in vehicle traffic is anticipated as part of the proposed 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 South Fork Trinity Planning Watershed, which under Resolution 18-43 is limited to 86 permits and 29 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 20 cultivation permits and the total approved acres would be 8.73 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 Zoning Administrator (See Attachment 2 for more information).

Staff recommends that the Zoning Administrator describe the application as a part of the consent agenda, survey the audience to see if any person would like to discuss the application and, if no one requests discussion, make all the required findings based on the evidence in the record and approve the application subject to the recommended conditions.

Alternatives: Several alternatives may be considered: 1) The Zoning Administrator could elect not to hear this item and put the decision making in front of the Planning Commission. Any decision to place this matter before the Planning Commission must be done before opening the public hearing on this project; 2) The Zoning Administrator could elect to add or delete conditions of approval; 3) The Zoning Administrator could deny approval of the requested permits if you are unable to make all of the required findings. Planning Division staff is confident that the required findings can be made based on the submitted evidence and subject to the recommended conditions of approval. Consequently, planning staff does not recommend further consideration of these alternatives.