



COUNTY OF HUMBOLDT

Legislation Text

File #: 23-1268, Version: 1

To: Planning Commission
From: Planning and Building Department
Agenda Section: Consent

SUBJECT:

Thomas Morgan, Conditional Use Permit and Special Permit
Assessor Parcel Number (APN) 208-111-029
Record No.: PLN-12286-CUP
Bridgeville Area

A Conditional Use Permit for 12,020 square feet of existing outdoor commercial cannabis cultivation supported by a 768 square foot ancillary nursery. Annual Water Usage is estimated at 120,000 gallons. The water source is a point of diversion and a well. Total existing water storage is 48,200 gallons and the applicant proposes 50,000 gallons of additional storage. Processing will occur offsite. Electricity is provided by generators and solar power is proposed. The project includes a Special Permit for the remediation of a historic cultivation area within the Streamside Management Area. Trimming will occur off-site at a licensed processing facility. Employees will not be used for this operation.

RECOMMENDATION(S):

That the Planning Commission:

1. Adopt the resolution (Resolution 23-__). (Attachment 1) which does the following:
 - a. Finds that the Planning Commission has considered the Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance and the Addendum that was prepared for the Thomas Morgan project); and
 - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Approves the Conditional Use Permit subject to the recommended conditions of approval (Attachment 1A)

DISCUSSION:

Project Location: The project is in Humboldt County, in the Bridgeville area, on the south side of State Highway 36, approximately 3.2 miles east from the intersection of Alderpoint Road and State Highway 36, then south on a private road for approximately 2.32 miles, on the property known as 27730 State Highway 36.

Present General Plan Land Use Designation: Residential Agriculture (RA), 2017 General Plan, Density: 40 acres per unit, Slope Stability: High Instability (3)

Present Zoning: Forestry Recreation (FR)-B-5(40)

Environmental Review: An Addendum to a previously adopted Mitigated Negative Declaration has been prepared for consideration per §15164 of the State CEQA Guidelines.

State Appeal: Project is NOT appealable to the California Coastal Commission.

Major concerns: None

Executive Summary: Thomas Morgan seeks a Conditional Use Permit for 12,040 sq. ft. of existing outdoor cannabis cultivation with 768 sq. ft. ancillary propagation, and a Special Permit. Water will be sourced from a well and a point of diversion on-site. Anticipated annual water usage is 120,000 gallons (9.4 gal/sf/yr). There is a 48,200 gallons of existing water storage and 50,000 gallons of proposed water storage on-site. Power will be sourced by Three (3) 6.5kW generators. The applicant proposes a new 768 square foot drying building. Trimming will occur off-site at a licensed processing facility. Employees will not be used for this operation. No cultivation activities are currently occurring on the site.

The applicant shall have processing conducted off-site at a licensed processing facility (**Condition A.17**). The applicant shall have documentation kept on-site to show the use of a licensed processing facility, to be furnished during an annual inspection (**Ongoing Condition B.18**). The project was referred to the Department of Environmental Health (DEH) on January 14, 2018, and comments were received on January 24, 2018. Comments from DEH stated “The site plan prepared by Green Roads Consulting shows the site septic system is installed within 100' of the Class II drainage. This septic system must be decommissioned and replaced under permit from DEH. Operator must install a new, permitted onsite wastewater treatment system (septic system) to serve the needs of the project.” The applicant must obtain a permit for and install an approved Onsite Wastewater Treatment System to support the cultivation areas within two years of permit issuance. Until such OWTS system is permitted and installed, the applicant must provide a portable toilet (**Condition A.6**). If a portable toilet is provided to the cultivation areas on an interim basis, the applicant shall provide receipts, or other equivalent documentation, annually to the Planning Division for proof of portable toilet service, unless a permitted onsite wastewater treatment system has been obtained (**Ongoing Condition B.18**).

The project proposes using two (2) existing light-deprivation greenhouses (outdoor) and the addition of one (1) new light-deprivation greenhouse (outdoor) without the use of supplemental lights. The total square footage of the three greenhouses is 12,040 square feet. The applicant is proposing the develop a

768 square foot greenhouse as a propagation greenhouse, which is less than 10% of the proposed cultivation area. Proposed propagation greenhouse will be located near cultivation greenhouse #1. Applicant will need to secure a building permit from the Humboldt County Building Department for the propagation greenhouse. (**Condition A.7**). Other buildings proposed to be used for cultivation activities include: one (1) 10' x 12' proposed storage shed and (1) 24' x 32' new construction drying building. All new construction will be outside of the Class II watercourse 50' buffer area and the Class III Drainage 50' buffer. The applicant is conditioned to obtain building permits for all existing and proposed structures with a nexus to cannabis, including but not limited to: Three (3) light-deprivation greenhouses, one (1) ancillary propagation greenhouse, one (1) drying building, (**Condition A.7**). Historic grading has occurred on the site in association with the cannabis cultivation. The applicant is conditioned to permit the historic grading that occurred in association to cannabis activities on-site, with the Building Division (**Condition A.8**). Power is sourced by three (3) 6.5kW generators; the applicant will be required to transition to full renewable power by January 1, 2026, by permitting solar systems with the Building Division or connecting to grid power (**Condition A.13**). Generators must be housed in secondary containment, and generator sheds must have a floor designed to incorporate containment for fuel leaks and spills which must be located on a stable surface with a minimum 150-foot buffer and Class II watercourses (**Condition A.18**).

Timber Conversion

Review of aerial photographs from 2005, 2014, and 2023 indicate that there has not been any significant timber conversion on the subject parcel between 2005 and 2023.

Fire Hazard

The parcel is in an area known to have a Very High Fire Hazard Severity and is within located in the State Responsibility Area (SRA) for fire response. The project was referred to the CalFire on January 12, 2018, and no comments were received. The Site Plan will need to be amended to show a 2,500-gallon water tank to be used for fire suppression needs only. The designated fire suppression tank shall have the appropriate fire hose that meets CalFire SRA requirements (**Condition A.9**).

Water Resources: The Applicant had a Water Resources Protection Plan (WRPP) prepared by Timberland Resource Consultants (WDID# 1B1721CHUM). The applicant will update the WRPP with the revised site plan and operations plan. The applicant will also implement the prescribed measures in the WRRP mitigation report (**Condition A.2**).

The California Department of Fish and Wildlife served the applicant Notice of Violation on March 23, 2018. The Notice of Violation identified four Fish and Game Code Violations that have yet to be cleared with CDFW. Prior to cultivating cannabis, the applicant must resolve all Fish and Game Code violations prior to cultivating cannabis and provide the County with a Closure Notice from CDFW (**Condition A.23**).

The total annual water usage for irrigation is estimated at 120,000 gallons (9.8 gal/sf/yr). The primary sources of water for this project are a point of diversion from an unnamed class II Watercourse on the property and a permitted well. The watercourse drains to Little Larabee Creek and the Van Duzen River. The diversion is subject to the terms of a California Department of Fish and Wildlife (CDFW)

Streambed Alteration Agreement #1600-2018-0752-R1 (**Condition B.1**). A Right to Divert and Use Water was issued by the State Water Resources Control Board (SWRCB), Registration H501306, Certificate Number H100267, on October 1, 2018. The applicant has rights to withdraw 32,585 gallons of water from the diversion annually for irrigation. The remaining 87,415 of the annual water budget must come from the well. The well, permit number 18/19-1186, has an estimated yield of 10 gallons per minute. The water is stored for use in 15 existing hard sided tanks with a capacity of 48,200 gallons. The applicant proposes an additional 50,000 gallons of storage in 10 hard sided tanks. The well is screened at an interval of between 60 to 240 feet and the water bearing unit is a mixture of hard and soft shale. The nearest surface water features are a seasonal Class II watercourse and a Class III watercourse, both watercourses are located approximately 220 feet away from the well head and at a similar elevation, indicating that the water bearing unit of the well is likely below the extent of any seasonal surface waters from these features. The site plan (Attachment 1.D) shows the relationship between the surface water features and the well. Little Larabee Creek is the nearest perennial watercourse to the well and at its nearest point is 1,179 feet away from the well head which is likely to be outside of the distance where the well would intersect with any underflow of the watercourse. Additionally, the deepest point of the infiltration zone for the well is 880 feet above sea level. The elevation of the nearest intersecting point between the well and Little Larabee Creek is at 760 feet above sea level. The nearest point on Little Larabee Creek is therefore located 120 feet below the lowest point of the well. For these reasons the well is unlikely to have any direct hydraulic connection to Larabee Creek. To further reduce the potential impact of the proposed project on the Van Duzen watershed, the approval of this project is conditioned upon adding an additional 21,800 gallons of storage in hard sided tanks for a total of 120,000 gallons of water storage (**Condition A.14**) which would support all of the annual irrigation needs and allow for complete forbearance from the well in addition to the CMMLUO requirement for forbearance from the diversion during the forbearance period. A condition of approval is that the applicant must cease well withdrawals for cannabis cultivation in the May 15th to October 31st forbearance period (**Condition A.22**).

The use of the well to provide approximately 90,000 gallons of water per year is unlikely to have any significant impact on groundwater recharge in the vicinity. Available USGS information (Fine-scale hydrologic modeling for regional landscape applications. Flint 2013) indicates that approximately 34% of precipitation goes to groundwater recharge in Northwest California. According to the Prism Climate Group, the lowest rainfall year of the last ten years within the vicinity of the project site was 24.85 inches in 2013, meaning that even in a substantial drought year like 2013 a total of 8.46 inches (37% of total), or .70 acre-feet (228,096 gallons) of rainfall is available for groundwater recharge per acre in this area. The total available recharge on the 40-acre parcel would far exceed the amount of irrigation needs for cannabis even in a substantial drought year. Given that the well is proposed to be used for 72% of the planned annual water budget and there is existing and planned water storage capacity for 100% of annual irrigation needs, planning staff believes that the record shows that the use of the well for cannabis would not be detrimental to or otherwise detract from any surface water features or groundwater resources in the vicinity.

All existing and proposed structures related to cultivation activity will be located outside of the required streamside management area (SMA) for the watercourses. The area surrounding the decommissioned greenhouse will be restored to its pre-development condition (both slope and natural

vegetative cover); the restoration will be confirmed by County inspection personnel within one year of permit issuance. (**Condition A.10**).

Biological Resources

Per review of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDDB) on July 16, 2023, there are no mapped special status species onsite. The project is located approximately 3,100 feet, or .58 miles to the nearest known Northern Spotted Owl (NSO) activity center. There was a positive observation of a Northern Spotted Owl on an adjacent parcel on July 6, 2000. There was a NSO Assessment completed on January 6, 2022, by Leopardo Wildlife Associates for the project; the assessment concluded that the project was unlikely to have any detrimental NSO impacts. The ongoing conditions of approval for the project include the following requirements: compliance with International Dark Sky Standards for lighting within the propagation greenhouse and ensuring that all noise levels do not go above 50 decibels at 100-foot or any tree line when noise generating equipment are in use (**Ongoing Conditions B.2 B.3**).

The project includes the restoration of a historic cultivation area on-site. An 85'x35' greenhouse was built without a permit in the streamside management area buffer. The applicant will be required to remove all materials related to the unpermitted greenhouse and remove all cultivation related equipment from the area surrounding the decommissioned greenhouse. The restoration must be completed within one (1) year of permit issuance and shall be confirmed by inspection by compliance personnel with the Humboldt County Planning Department that no less than 2,975 square feet were successfully restored. (**Condition A.10**)

The project was referred to CDFW on December 12, 2018, and no comments were received at that time. The applicant is not allowed to utilize stringed lighting in the outdoor cultivation greenhouses, and this must be demonstrated through a site inspection (**Condition A.20**).

The California Department of Fish and Wildlife served the applicant Notice of Violation on March 23, 2018. The Notice of Violation identified four Fish and Game Code Violations that have yet to be cleared with CDFW. Prior to cultivating cannabis, the applicant must resolve all Fish and Game Code violations prior to cultivating cannabis and provide the County with a Closure Notice from CDFW (**Condition A.23**).

Tribal Cultural Resource Coordination

The project is in the Aboriginal Ancestral Territory of the Bear River Band of Rohnerville Rancheria. The project was referred to the Bear River Band of Rohnerville Rancheria, and the Northwest Information Center (NWIC) on December 12, 2018. Archaeological Research and Supply Company prepared a Cultural Resources Investigation in July of 2019 for the Area of Potential Effect (APE) on the subject parcel. No cultural resources were found, and the investigation concluded that the project would not affect cultural resources. A response was received from the Bear River Band tribe on January 7, 2022, stating that the project did not appear to represent a source of significant impacts on cultural resources, and requested that the applicant adhere to Inadvertent Discovery Protocols. The applicant shall adhere to Inadvertent Discovery 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. The response from the Northwest Information Center indicated that the project included the possibility of unrecorded archeological sites, however since the project does not entail significant ground disturbing activities, no further study for archaeological resources is recommended at this time (**Informational Note 3**).

Access

Access to the project is from State Highway 36, approximately 3.2 miles east from the intersection of Alderpoint Road and State Highway 36, then south on a private road for approximately 2.32 miles, on the property known as 27730 State Highway 36. The applicant submitted a Road Evaluation Report on September 10, 2018. The report states that the entire road segment is developed to the equivalent of road category 4 standard. As the project is accessed off State Hwy 36, the project was referred to Caltrans. Comments from Caltrans included the recommended condition that the applicant secure an encroachment permit, improve the driveway to meet current Caltrans standard for a commercial road approach (driveway) with a minimum throat width of 20 feet (**Condition A.21**). The site will be operated by the applicant and no employees. A maximum of four (4) vehicle trips are anticipated per day. The operations are pre-existing, and no increase in traffic is anticipated. Within one year from the permit effective date, the applicant shall take steps to join or form a Road Maintenance Association for the maintenance of the privately maintained portions of the access roads to the project site located on Assessor's Parcel Number (208-111-029). The necessary steps include sending notices to all road users of the requirement to form a Road Maintenance Association and conducting a meeting with the users of the road, especially those engaged in commercial cannabis activities to discuss formation of the Road Maintenance Association. The applicant shall provide evidence, including notice, meeting minutes, and the decision as to whether a Road Maintenance Association is being formed to show this effort. In the even the applicant is unable to coordinate formation of a Road Maintenance Association, the applicant shall pay fair-share cost for maintenance of the road to any road user engaged in maintaining the road (**Condition A.21**).

Consistency with Humboldt County Board of Supervisors Resolution No. 18-43

Planning staff determined that 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 in the Van Duzen River Watershed, which under Resolution 18-43 is limited to 425 permits and 146 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 153 cultivation permits and the total approved acres would be 41.87 acres of cultivation.

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies and all responding agencies have either responded with no comment or recommended approval or conditional approval. (Attachment 5)

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. 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 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.

2. 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.

ATTACHMENTS:

1. Resolution
 - A. Conditions of Approval
 - B. Cultivation Operations Plan
 - C. Site Plan
2. Location Maps
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
 - A. Water Resources Protection Plan
 - B. Water Right
 - C. Final Streambed Alteration Agreement with CDFW
 - D. Well Completion Report
 - E. Road Evaluation Report Form
 - F. Notice of Violation
5. Referral Agency Comments and Recommendations
 - A. Department of Environmental Health Comments
 - B. Department of Public Works Comments
 - C. Caltrans Comments
 - D. CDFW Comments
6. Cultivation Area Verification Documents Prepared by Planning Division
 - A. Cultivation Area Verification
7. Watershed map

Applicant

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Owner

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Agent
N/A

Please contact Andrew Whitney, Associate Planner, at awhitney2@co.humboldt.ca.us or at (707) 441-2634 if you have any questions about this public hearing item.