



COUNTY OF HUMBOLDT

For the meeting of: 3/2/2023

File #: 23-260

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

SUBJECT:

Fantastic Gardens, LLC (11795) Zoning Clearance Certificate and Special Permit
Assessor Parcel Number 210-144-012
Record No.: PLN-11795-CUP
Dinsmore Area

A Zoning Clearance Certificate for 3,792 square feet (SF) of existing mixed-light commercial cannabis cultivation and a Special Permit for work within the Streamside Management Area (SMA) for culvert replacement and crossing upgrades, as recommended by the Site Management Plan. The project site shares water resources and propagation facilities with two adjacent project sites on separate parcels under the same ownership (APNs 210-144-011 and 210-144-017). Plants are propagated in two (2) nurseries totaling 2,650 SF on APN 210-144-011. Irrigation water is sourced from one (1) 420,000-gallon rainwater catchment pond on an adjacent parcel (APN 210-144-017) and three (3) surface water points of diversion (POD): POD-1 and POD-2 (both located on APN 210-144-011) and POD-3 (APN 210-144-012). Estimated annual water use across the three (3) project sites is 465,000 gallons (11.5 gal/SF). Water is stored in the pond and in forty-one (41) tanks located on the three (3) project sites, including: one (1) 5,000-gallon tank, thirty-five (35) 2,500-gallon tanks, one (1) 1,500-gallon tank, and four (4) 1,000-gallon tanks. Total water storage is 518,000 gallons. The primary source of electrical power is an existing solar system. A 7-kW Honda generator is used as a backup power source.

RECOMMENDATION(S):

The Planning Commission:

Adopt the resolution (Attachment 1), which does the following:

- a. Finds that the Planning Commission has considered the Mitigated Negative Declaration previously adopted for the Commercial Medical Marijuana Land Use Ordinance as well as the Addendum to the Mitigated Negative Declaration that was prepared for the Fantastic Gardens, LLC project pursuant to Section 15164 of the CEQA guidelines; and
- b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
- c. Approves the Zoning Clearance Certificate and Special Permit subject to the recommended conditions of approval (Attachment 1A)

DISCUSSION:

Project Location:

The project is located on the south side of Burr Valley Road, approximately 9.1 miles southeast from the intersection of State Highway 36 and Burr Valley Road

Present General Plan Land Use Designation:

Residential Agriculture (RA), 2017 General Plan; Density: 20-160 acres per unit; Slope Stability: High Instability (3)

Present Zoning:

Forestry Recreation, Special Combining Zone (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:

Fantastic Gardens Humboldt, LLC seeks a Zoning Clearance Certificate (PLN-11795-CUP) for 3,792 SF of mixed light cannabis cultivation and a Special Permit for work within the Streamside Management Area (SMA) for culvert replacement and crossing upgrades, as recommended by the Site Management Plan. The project site shares water resources and propagation facilities with two adjacent project sites on separate parcels under the same ownership (APNs 210-144-011 and 210-144-017). Plants are propagated in two (2) nurseries totaling 2,650 SF on APN 210-144-011. The nurseries serve three (3) project sites (PLN-11797-CUP, PLN-11795-CUP, and PLN-11969-CUP) under the same ownership (APNs 210-144-017, 210-144-011, and 210-144-012).

The site is zoned as Forestry Recreation and Special Combining Zone (FR-B-5[40]) as defined in the Humboldt County 2017 General Plan Update. Drying occurs in an 1,800-SF building on a neighboring parcel under the same ownership (APN 210-144-017). Further processing occurs offsite. One (1) to three (3) employees will assist with project operations. The primary source of electrical power is an existing solar system. A 7-kW Honda generator is used as a backup power source.

Water Resources:

Irrigation water is sourced from one (1) 420,000-gallon rainwater catchment pond on an adjacent parcel (APN 210-144-017) and three (3) surface water points of diversion (POD): POD-1 and POD-2 (both located on APN 210-144-011), and POD-3 (APN 210-144-012). Estimated annual water use across three (3) project sites (PLN-11795-CUP, PLN-11797-CUP, and PLN-11969-CUP) is 465,000 gallons (11.5 gal/SF). Water is stored in the pond and in forty-one (41) tanks on three (3) project sites: one (1) 5,000-gallon tank, thirty-five (35) 2,500-gallon tanks, one (1) 1,500-gallon tank, and four (4) 1,000-gallon tanks. Total water storage is 518,000 gallons. The applicant has been conditioned to remove two (2) water bladders (25,000 and 20,000 gallons) to limit the potential for erosion (**Condition A11**).

The Right to Divert and Use Water (Certificate No. H100685) allows up to 2.693 acre-feet per year to be collected from November 1 to March 31 and as permitted in the diversion season specified in the current version of the State Water Board's Cannabis Policy, whichever is more restrictive. The rate of diversion is limited to 14,400 gallons per day (10 gallons per minute x 1,440 minutes/day), pursuant to State Water Board

Cannabis Policy 78. Based on the proposed water storage of 518,000 gallons and the estimated annual water usage of 465,000 gallons, the applicant would have enough water storage capacity to forbear completely during the required forbearance period.

A Site Management Plan (SMP) was prepared in fulfillment of State Water Resources Control Board (SWRCB) General Order WQ 2019-0001-DWQ. The document was prepared to meet the North Coast Regional Water Quality Control Board (NCRWQCB) requirements for Tier 2 discharges of waste resulting from cannabis cultivation (WDID No. 1_12CC427340). The SMP is for the subject parcel (APN 210-144-012) and two adjacent parcels (APNs 210-144-011 and 210-144-017) under the same ownership. The applicant seeks a Special Permit for work within the Streamside Management Area (SMA) for culvert replacement and crossing upgrades, as recommended by the SMP. There are fourteen (14) stream crossings across the three parcels, ten (10) of which require remediation. Project work includes installing a vented rock ford (Project 1), installing upgraded culverts (Projects 2-3), decommissioning crossings (Projects 4-6), and installing rock armored fill or fords (Projects 7-8, 10-11). (**Condition A12**)

The SMP includes 133 corrective actions summarized as follows (**Condition A13**):

- Use appropriate control measures to minimize erosion of disturbed areas. If sediment builds up behind linear sediment controls, dispose the sediment in an upland area outside the watercourse buffer.
- Regularly remove debris and trash from cannabis cultivation sites.
- Ensure that all access roads are hydrologically disconnected from receiving waters.
- Install rock surface on steep access roads and equip them with adequate drainage.
- Decommission or relocate existing roads away from riparian setbacks.
- Use water bars and rolling dips on access roads to minimize surface erosion.
- Plant three oak trees for every one oak tree damaged or removed.
- Equip culvert crossings with critical dips to prevent diversion. Properly install culverts.
- Remove existing dams, as permitted.
- Revegetate soil exposed by cultivation activities with native vegetation by live planting, seed casting, or hydroseeding within seven days of exposure.
- Properly store fertilizers, pesticides, and petroleum products in accordance with the SMP.
- Follow best practice treatment controls (BPTCs) for cannabis winterization.
- Ensure CDFW-approved water intake screens are utilized at each point of diversion (POD).
- Use water meters to document diversion of water, including diversion to storage.
- Install float valves on water storage tanks.
- Follow BPTCs for sediment discharge, as outlined in the SMP.

A Lake and Streambed Alteration Agreement (LSAA) has been filed with the California Department of Fish and Wildlife (CDFW) to address all work to be done within the waterways (Notification No. 1600-2020-0288-R1). The LSAA addresses a total of seventeen (17) project encroachments, four (4) of which are located on the subject parcel (210-144-012). The other project encroachments are located on adjacent parcels (210-144-014, 210-144-011, 210-144-017, and 210-261-001). Encroachments on the subject parcel include two (2) crossings, an onstream pond, and a point of diversion (POD). Work proposed under the LSAA is summarized as follows (**Condition A14**):

- Replace undersized culverts with larger culverts or rocked fords at six (6) crossings.

- Decommission three (3) crossings.
- Construct a rock armored channel to convey a Class III stream.
- Remove spoils placed within a stream buffer.
- Decommission two (2) onstream ponds and restore the stream channel at each location.

The LSAA establishes specific recommendations that the applicant must apply to offset potential impacts to waterways within the area. The recommendations are summarized as follows: 1) Document all activities that occur within waterways at the project site; 2) All work shall be confined to the dry weather period, from June 15 through October 15 of each year; 3) Water diversion structures shall be constructed and maintained to not inhibit the movement of aquatic life; and 4) Erosion and runoff protection measures shall be placed and maintained along streambanks prior to any construction activities. Under the terms of the LSAA, project work was to be completed by October 15, 2022. If work has not been completed, the applicant will be required to formalize a new LSAA with CDFW (**Condition A15**).

Biological Resources:

A Botanical Survey Report was prepared by Hohman & Associates Forestry Consultants (September 5, 2019; revised July 2020). Seasonally appropriate floristic surveys were performed on May 22, July 14, and July 19, 2019. A rare plant species, beaked tracyina, was initially reported as present on one parcel within the project area (210-144-017). However, a follow-up visit to the site (June 19, 2020) revealed that these reports were made in error, and the identified plants were actually *Crepis pulchra*. No special status plant or animal species were identified within the project area, and no recommendations were made. Project activities are not expected to produce adverse or cumulative effects to any special status species or habitat, due to the small size of the project area and the type of proposed activities. Therefore, potential project impacts to biological resources are considered low and unlikely, with implementation of the mitigation measures identified in the CMMLUO Mitigated Negative Declaration (MND) adopted on January 26, 2016.

Cannabis Relocation and Restoration Plan:

A Cannabis Relocation and Restoration Plan was prepared by Natural Resources Management Corporation (November 2, 2022) to address 3,221 SF of cultivation area located within the streamside management area (SMA). The relocation site is located on the eastern side of the property (APN 210-144-012). The cultivation area to be relocated will be moved into two (2) 1,200-SF hoop houses on slopes less than 15 percent. The pre-existing cultivation area within the SMA will be cleaned up and revegetated with 504 Oregon white oak trees, equivalent to one tree for every 25 square feet of the former cultivation site. A five-year monitoring, reporting, and maintenance plan will ensure the revegetation effort is successful, meaning at least 85 percent of plantings survive and less than 5 percent of the absolute cover area is composed of invasive plants (**Condition A16**).

Grant Deed:

The parcel (210-144-012) was created in compliance with all applicable state and local subdivision regulations, as it was recorded via grant deed with Humboldt County on March 12, 2009.

Energy:

The primary source of electrical power is an existing solar system. A 7-kW Honda generator is used as an emergency backup power source.

Access:

The project is located on east side of Burr Valley Road, approximately 8.8 miles southeast from the intersection of State Highway 36 and Burr Valley Road, in the Dinsmore area in eastern Humboldt County. A Road Evaluation Report prepared by Praj White, PE, of NorthPoint Consulting Group, evaluated routes leading to the subject parcel and concluded only minor modifications are required to accommodate increased traffic associated with the project (February 18, 2019). Recommendations are summarized as follows (**Condition A18**):

- Install “Single Lane Bridge” signs at Road Point (RP) 4.
- Maintain turnouts at RPs 6, 9, 11, 12, 13, 18, 24, 25, 26, 27, 28, 30, 32, 36, 45, 47, 48, and 50.
- Install “Drive Slow” signs at RP 23.
- Install a turnout between RP 34 and RP 35.

Humboldt County Department of Public Works (DPW) noted that multiple road evaluation reports have been prepared for segments of Burr Valley Road and other access roads. DPW recommended combining all recommendations from various road evaluation reports into a single action plan, with implementation responsibility falling upon the road maintenance association or divided among cultivators using Burr Valley Road to access their respective project sites (**Condition A19**). DPW also recommended a standard condition of approval related to proximity of farms be applied to the project (**Condition A20**).

Geologic Suitability:

Cultivation will occur on slopes of 15% or less.

Tribal Consultation:

The project was referred to the California Historical Resources Information System - Northwest Information Center (NWIC) and the Bear River Band of the Rohnerville Rancheria. After reviewing project materials, Melanie J. McCavour, Ph.D., the Tribal Historic Preservation Officer for the Bear River Band of the Rohnerville Rancheria, found that the project is unlikely to have significant impacts on cultural resources and recommended that the standard inadvertent discovery protocol be applied to the project (**Condition A17**).

Less Than Three Acre Conversion Mitigation Plan:

A Less Than Three Acre Conversion Mitigation Plan was prepared by Steven Hohman, RPF, in February 2021 to address approximately 0.72 acre of unauthorized timberland conversion at five (5) sites between 2005 and 2012: Site A (0.06 acre), Site B (0.14 acre), Site C (0.32 acre), Site D (0.18 acre), and Site E (0.02 acre). The following corrective actions were recommended in the report (**Condition A21**):

- At Site C, remove the greenhouse hoop structure and contour slope to drain flat, where feasible.
- At Site C, place an additional one to two feet of mixed rock at the outlet of the instream pond to reduce erosion potential.
- At Site E, place an additional six inches to one foot of mixed rock at the outlet of the instream pond to reduce erosion potential.
- At Reference Points (RP) 4-6, install a rocked ford at each stream crossing and line each ford with four to six inches of rock left and right of the hinge line for 10 feet.
- At RP7, remove the greenhouse hoop structure and contour the slope to drain flat, where feasible.
- At RP8, place an additional one to two feet of mixed rock at the outlet of the instream pond to reduce erosion potential.

- At RP9, place an additional six inches to one foot of mixed rock at the outlet of the instream pond to reduce erosion potential.

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

Approval of this project is consistent with Humboldt County Board of Supervisors Resolution No. 18-43 which established a limit on the number of permits and acres which may be approved in each of the County's Planning Watersheds. The project site is in the Van Duzen Planning 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 for cultivation in this Planning Watershed would be 119 permits and the total approved acres would be 39.9 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 to add or delete conditions of approval. The Planning Commission could deny approval if unable to make all the required findings. Staff has concluded the required findings in support of the proposal can be made. Consequently, staff does not recommend further consideration of these alternatives.

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. Right to Divert and Use Water
 - B. Site Management Plan
 - C. CDFW LSAA
 - D. Botanical Survey Report
 - E. Cannabis Relocation and Restoration Plan
 - F. Road Evaluation Report
 - G. Less Than Three Acre Conversion Mitigation Plan
 - H. CAV Summary Report
 - I. CAV Proof of Preexisting Cultivation
5. Referral Agency Comments and Recommendations
 - A. DEH Response
 - B. Public Works Response

Applicant

File #: 23-260

Peter Jivanov
3070 Stanford Lane
El Dorado Hills, CA 95762

Owner

Mario Dimitrov
PO Box 313
Hydesville, CA 95547

Agent

NRM Corporation
c/o Breeanna Kalson
1434 3rd St #0682
Eureka, CA 95501

Please contact Steven Santos, Senior Planner at santos@co.humboldt.ca.us or 707-445-7541 if you have any questions about the scheduled item.