



COUNTY OF HUMBOLDT

For the meeting of: 11/7/2024

File #: 24-1541

To: Planning Commission

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Showers Pass LLC Conditional Use Permits and Special Permit
Assessor Parcel Numbers (APN) 317-182-019-000 and 317-182-020-000
Record Numbers.: PLN-10854-CUP
Kneeland area

Project Description: A Conditional Use Permit for 12,200 square feet (SF) existing outdoor cannabis cultivation and includes 1,400 SF of ancillary nursery and propagation space. A permitted well supplies cultivation water. Water storage of 10,000 gallons occurs in tanks. Annual water budget is approximately 93,000 gallons. Processing is proposed onsite but will utilize offsite processing until an appropriate facility is constructed. Power is provided by generators, the project is conditioned to transition to 100% renewable power by January 1, 2026, with generators reserved for emergencies only. The project includes a special permit for reduced setbacks to public lands.

RECOMMENDATION(S):

That the Planning Commission:

1. Adopt resolutions (Resolution 24-__) (Attachments 1) which does the following:
 - a. Finds the Planning Commission has considered the Mitigated Negative Declaration previously adopted for the Commercial Medical Marijuana Land Use Ordinance and the Addendum that was prepared for the Showers Pass Farms LLC project (Attachment 3); and
 - b. Finds the proposed project complies with the General Plan and Zoning Ordinance; and
 - c. Approves the Showers Pass Farms LLC Conditional Use Permit and Special Permit subject to the recommended conditions of approval (Attachment 1A).

DISCUSSION:

Project Location: The project is in the Kneeland area, on the south side of Stapp Road, approximately 5.5 miles east from the intersection of Showers Pass Road and Stapp Road, on the property known to be in the north half of the northeast quarter of the southwest quarter of Section 35, Township 03

North, Range 04 East.

Present General Plan Land Use Designation: Agricultural Grazing (AG), 2017 General Plan, Density: 20 -160 acres per unit, Slope Stability: High Instability (3)

Present Zoning: Unclassified (U)

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: Existing wet crossing of a fish-bearing stream (addressed through requirements for bridge installation).

Executive Summary: Showers Pass Land Farms LLC seeks a Conditional Use Permit for 12,200 square feet of existing outdoor cannabis cultivation. Cultivation will occur in on graded flats and includes an irregularly shaped full sun cultivation area and two 1600 square foot light-deprivation greenhouses. All cultivation areas are located over 100 feet away from the property boundary and outside of streamside management areas. The cultivation areas and associated infrastructure are shown on the site plan, **Attachment 1C**. Irrigation water for cannabis is supplied by a permitted well. 9,000 gallons of irrigation water is stored in hard plastic tanks. Water for cannabis cultivation is used from March to November. Water source, storage and use is detailed in the Operations Plan, **Attachment 1B**.

The project includes two existing buildings: a 35'x45' building that is used for harvest storage, drying and propagation and a 16'x16' generator shed that is also used for storage. On April 15, 2024, Department of Fish and Wildlife (CDFW) staff conducted a site inspection at the subject property. The referral comments from CDFW are incorporated as **Attachment 5A**. The site inspection identified three main concerns: the stream crossing to access the site, lack of adequate water storage, and potential impacts Northern Spotted Owls. CDFW comments resulted in project conditions that are further described in the Water Resources, Biological Resources, and Stream Crossing sections of this report and **Attachment 1A**, Conditions of Approval.

Green waste is composted in a designated area away from surface waters as noted on the site plan. Organic fertilizers and pesticides are stored in an agricultural storage structure that meets all requirements for secondary containment. All fuel and hazardous materials are stored in secure areas with secondary containment in accordance with applicable regulations. Garbage and recycling are stored in a secure waste storage area. The waste storage area complies with Best Practical Treatment or Control (BPTC) measures to prevent wildlife tampering and transport of waste to waters of the State. Waste is removed from the property every two weeks and transported to an approved waste disposal facility. Domestic wastewater treatment is proposed to be managed with a proposed onsite wastewater treatment system that will be permitted with the Humboldt County Department of

Environmental Health. The applicant will pursue permitting for the proposed septic systems upon project approval. The project is conditioned that portable toilets must be used until approval of a permitted onsite wastewater treatment system (OWTS) (**Condition of Approval B.2**). In addition, the project is conditioned that evidence is provided to County staff during annual inspections to confirm the continual use of portable toilets to serve the needs of cultivation staff until the OWTS and residence is permitted.

Showers Creek Stream Crossing:

The access to the property includes a stream crossing of Showers Creek on Stapp Road that is currently a wet ford. This means vehicles travel through a fish-bearing stream. In addition to this route, the property has an access easement for a private road that leaves Stapp Road and crosses Showers Creek and requires travel through a different wet ford crossing. The two access routes essentially create a loop back to Stapp Road. Both segments of the loop require driving through Showers Creek. Crossing of this fish-bearing stream poses an on-going threat to both wildlife and water quality. There are several private properties that utilize these access routes, including three previously permitted cannabis operations and three (including this application) not yet permitted operations.

Proposals have been submitted to install a permanent bridge crossing over one of the crossings on one of these access easements. Discussions about installing a bridge on the other creek crossing have occurred among property owners, cannabis applicants, and permit holders. These discussions included a site inspection at the Showers Creek crossings that was attended by California Department of Fish Wildlife (CDFW) and County staff, and most of the cannabis operators utilizing these crossings.

Negotiations have begun among the landowners to create a Road Maintenance Association to address these improvements and to seek grant funding. Recommended conditions of approval include the requirement to join or form a Road Maintenance Association (**Condition of Approval A.9**) and a requirement to improve at least one of the crossings with a permanent bridge, within two years of the effective date of project approval (**Condition of Approval A.5**). Included in this recommended condition is the requirement that continued access to the operation be via the improved crossing once such a crossing is in place. CDFW requested that no cultivation occur without a permanent bridge crossing in place in their written referral comments (**Attachment 5A**). The CDFW referral comments are included in Attachment 5 and include correspondence between CDFW and Planning staff regarding the timing of the bridge installation. After discussion, CDFW does not object to allowing the applicant up to two years to continue to operate while working to install the bridge. County staff believes that the ability to continue to operate for at least two years while seeking funding and permitting of the permanent crossing is important to ensure that this crossing installation is successful. The farm has been operating since 2010 and no additional traffic is associated with the proposed project. The ability to operate will make the bridge improvements financially feasible; if the ability to cultivate is curtailed so will the potential for funding the bridge.

The three farms already permitted that utilize these crossings did not have a requirement imposed on their permits to install a bridge. However, all permitted and unpermitted cannabis operations are required to join and work with any Road Maintenance Association that is created, and most of these operations have already been in direct communication with County and CDFW staff regarding the crossing of Showers Creek. Accordingly, if the Showers Pass Farms, LLC project is approved with this condition in place, the County will notify these farms of their requirement to contribute to ensuring these improvements happen. If the crossing is not in place within two years, all these permits will be considered for revocation. As discussed above, County staff has already been in communication with all these farms regarding this issue and this notification will therefore not come as a surprise.

Water Resources:

The site is in the Mad River Watershed. There are no watercourses that run through the project parcel. The site is currently enrolled in the State Water Resources Control Board's (SWRCB) General Order (No. WQ 2019-0001-DWQ) for Waste Discharge Requirements and Water Quality as a Tier II Moderate Risk site under WDID 1_12CC402985 and 1B161503CHUM. A Site Management Plan (SMP), prepared by Green Road Engineering and dated July 30, 2019, was submitted (**Attachment 4B**). The project is conditioned for the applicant shall adhere to the corrective actions listed in the SMP and management practices in the SMP (**Condition of Approval B.18**). The applicant submitted a Notification for a Lake and Streambed Alteration Agreement On August 2, 2019, to the California Department of Fish and Wildlife (CDFW) (LSAA, 1600-2019-0643-0000-R1) (**Attachment 4C**) for a Self-Certification with no projects. On January 14, 2020, the application was approved by Operation of Law.

The project sources irrigation water from an existing groundwater well (Permit #15/16-0880). The well is utilized for both domestic use and irrigation needs for two projects. Both projects using the well are conditioned to meter domestic and irrigation water use separately and have these meter readings available when requested (Condition of Approval A.2). The estimated annual water use for PLN-10854-CUP is 81,200 or 6.7 gallons per square foot. Annual cultivation water usage for PLN-11989-CUP is estimated at 160,000 gallons (7.6 gal/sf/yr). The total annual water demand for cannabis irrigation water for both projects is 241,200 gallons. The estimated domestic water use is 40,000 gallons. The total annual water demand on the well is 281,200 gallons. Total water storage for PLN-10854-CUP is currently 10,000 gallons contained within water hard sided tanks. The project is conditioned to have and maintain one 2,500-gallon water tank on-site designated for fire suppression only (**Condition of Approval B.27**).

The project is conditioned to install water meters at the well head and install meters for domestic use, irrigation water used for PLN-10854-CUP, and irrigation use for PLN-11989. Both projects are required to keep monthly records of water usage. The water meter records shall be made available to the Planning Department at each annual inspection or as requested by planning staff (**Condition of Approval A.2**).

The applicant was not able to procure a surface water connection report for the well from a licensed geologist; Staff performed the following analysis to determine the potential for the well's connection to surface water resources. The applicant provided a well completion report (WCR2017-004732) for the well that was drilled in 2017. The well head is at an elevation of approximately 3,480 feet above sea level. The well is located on a relatively flat bench on the northern edge of the parcel. The terrain in the well's vicinity generally slopes down in a northerly direction. The elevation of the bottom of the well is approximately 3,220 feet. The well head is located 3,978 feet south-southwest of the nearest point on the Mad River which is at an elevation of 1,910 feet and is just upstream from the confluence of the Mad River and Showers Creek. The shortest distance between Showers Creek and the well is 3,131 feet. Showers Creek is a perennial stream, the nearest point to the well is at an elevation of 2380 feet. There is a Class II Water course that is an unnamed tributary to Showers creek located 1,144 away from the well, the nearest point on the watercourse is 3,970 feet elevation.

The well was drilled Depth of 260 feet below ground surface (BGS) using a Down the Hole Hammer (DTH) drill, DTH drills are better equipped to handle harder rock formations, such as basalt, as they deliver high-impact force directly at the bottom of the hole. All the watercourses identified above are over 240 below the bottom of the well, with a minimum lateral distance of 1,144 feet. The drillers encountered topsoil from 0-4 feet BGS, silt and brown sandstone from 4-24 feet BGS, brown sandstone from 24-80 BGS, blue basalt from 80-195 feet BGS, and Black Basalt from 195-260 feet BGS. The well is double cased from the surface down to 140 feet BGS with a 6" diameter steel outer casing with an inner casing of 5¼" diameter PVC. Double casing is effective in preventing surface water infiltration of the well's bearing area from surface water resources. The dual-layered design creates a secure seal that reduces the risk of surface water or pollutants from infiltrating the borehole and enhances the stability of the well in hard substrates such as the basalt layer found in this well. The well screened between 60 and 260 feet below ground surface. The well is sealed with a bentonite layer down to 20 feet further protecting the well from surface water infiltration. The closest waterbody, a Class II unnamed watercourse and a tributary to Showers Creek, is approximately 1144 feet to the north northeast. Because this is an intermittent watercourse that only carries water in response to rain events, it is unlikely to have any connection to a subsurface aquifer. The well is located approximately 3,131 feet from Showers Creek, and the bottom of the well is 840 feet above the nearest intersecting point on the Showers Creek. The well is 3,978 feet from the nearest intersecting point on the Mad River and the bottom of the well is 1,310 feet above the level of the river. The site geology is part of the Franciscan Complex which is primarily composed of Late Cretaceous to Pliocene sandstone, shale and minor conglomerate. The geologic layers of the water bearing unit (sandstone and basalt) are more indicative of a bedrock aquifer than an alluvial aquifer. Given the physical characteristics of the well, the lateral distance of the well away from surrounding watercourses, the hydrological profile of the area in relation to the well, and the geologic characteristics of the well's substrate, it is unlikely that the well has any geologic connection to surface water resources. Accordingly, there will be no adverse impact on public trust resources associated with Showers Creek or the Mad River as a result from the use well for irrigation purposes.

According to available USGS information (Fine-scale hydrologic modeling for regional landscape applications, Flint 2013), 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 38.87 inches in 2013, meaning that even in a substantial drought year like 201, a total of 14.38 inches (37% of total), or 1.19 acre-feet (387,762 gallons) of rainfall is available for groundwater recharge per acre in this area. The total available recharge on the two parcels, 120 acres, parcel would be over 45 million gallons, meaning that even in a substantial drought year the irrigation needs would be less than 5% of the total available groundwater recharge occurring on the parcel.

At the initial installation of the well, a 4-hour drawdown test was conducted that indicated the well could produce 15 gallons per minute. During the test the first water was encountered at 95 feet. This yield test, conducted on September 14, 2017, shows that the well can produce 900 gallons per hour in what is typically the driest part of the year. While the initial drawdown test is not always a good indicator of the long-term yield of a well, the initial drawdown in shows that the well was a good producer at the time of the test. Furthermore, the applicant has been using the well as the sole source of water for the cultivation operation for the last five growing seasons with no water shortages or dry down events. This indicates that production of the well is in sync with the water demand of the project. The project was referred to the California Department of Fish and Wildlife and comments were received (Attachment 5A). In their comments, CDFW requested the applicant develop sufficient water storage for a full year of cultivation water. Given that the applicant has a good producing well with a solid track record and that the installation of tanks come with environmental impacts and failure risks, staff is recommending the development of an additional 30,000 gallons of water storage which will mean that the applicant will have half of their annual water needs stored in tanks (**Condition of Approval A.9**).

The project referral to the Division of Environmental Health (DEH) resulted in a request for conditions of approval. The project is conditioned requiring the use of portable toilets for cultivation activities unless a septic system is permitted in association with a permitted structure (**Condition of Approval B.2**). It is noted there is a septic system currently on site next to the residence but the compliance and permitting status of the system is unknown. The project was referred to the Humboldt Bay Municipal Water District who in 2018 expressed concerns about the project's potential to impact the water quality and water supply in the Mad River and requested a CEQA review of the project. This was a standard comment for the HBMWD at the time and may not reflect the current position of the district. Nonetheless, the impact on water quality and water quantity is well addressed through the erosion and water quality standards that are required to be in place and the low amount of water use combined with seasonal forbearance from diversion. An addendum to the Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance is included as **Attachment 3**.

Biological Resources: A review of the California Natural Diversity Database did not indicate the potential of any special status plants or animals on the project site. There is a record of *Atragalus*

umbraticus, commonly known as Bald Mountain milk-vetch, on an adjacent parcel. The plant is rare and fairly threatened in California but is more common elsewhere. The plants are found on disturbed logging roads, common on adjacent timber properties. The project does not involve new ground disturbance and should not have negative impacts on the Bald Mountain milk-vetch. The project is within .7 miles of three Northern Spotted Owl activity centers. HUM 982 is approximately 1,100 feet southwest of the southern-most cultivation sites, HUM 839 is approximately 1,800 feet east of the southern-most cultivation sites, and HUM 479 is approximately 2,380 feet north-northeast of the northern-most cultivation site. The applicant had a Northern Spotted Owl Impact Assessment prepared for the proposed project, Timberland Resource Consultants, June 2023, included as **Attachment 4I**. The assessment concluded that the existing cannabis cultivation operation would be unlikely to have noise disturbance impacts to Northern Spotted Owls. The assessment acknowledges the potential disturbance associated with supplemental lighting. The assessment concludes that if all greenhouses with supplemental lighting are covered so that no light escapes 30 minutes prior to sunset and 30 minutes post sunrise the impacts to Northern Spotted Owls will be reduced below the level of significance. The project has been conditioned to ensure supplemental lighting associated with the nursery and mixed light cultivation adheres to Dark Sky Association standards (**Condition of Approval B.6**). Permit conditions of approval also prohibit using synthetic netting (**Condition of Approval B.8**), ensure refuse is contained in wildlife-proof storage (**Condition of Approval B.9**), and prohibit use of anticoagulant rodenticides to further protect wildlife (**Condition of Approval B.11**). As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively affect the northern spotted owl or other sensitive species.

Energy: Power is currently provided by generators. The applicant revised their operations plan to eliminate mixed light cultivation; the proposed full term outdoor cultivation needs less electricity. The project is conditioned to convert to renewable energy no later than January 1, 2026 (**Condition of Approval A.12**).

Access: The project is in the Kneeland area. The project is accessed using Stapp Road, approximately 5.4 miles from the intersection of Showers Pass Road and Stapp Road (APN: 317-182-019), in eastern Humboldt County. A Road Evaluation report was prepared for an adjacent project using the same access in September 2020, which recommended 1) clearing of brush on both sides of the roadway to maintain maximum intervisibility on the roadway; 2) installation of a stream crossing and 3) installation of turnouts on both sides of the stream crossing. With these recommendations, the Road Evaluation report concludes that Stapp Road will be able to safely and functionally support the intended purposes of the proposed project. There are currently three approved cannabis operations off this road that utilize this same access and three more that are currently being considered for approval. The applicant is conditioned to demonstrate participation in Road Maintenance Associations for Stapp Road. Road Maintenance Associations for shared roads shall adhere to and implement the recommendations included in the engineered road evaluations prepared for the project's access roads. If the applicant is unable to coordinate road improvements through the Road Maintenance Association, the applicant shall pay fair-share cost for maintenance of the road to any

road user engaged in maintaining the road. Evidence of such payments shall be submitted to Humboldt County Planning and Building Department (**Condition of Approval A.10**).

Geologic Suitability: The project does not propose any new construction or grading. Erosion will be controlled with the implementation of the site management plan.

Timber Conversion: The project site is in an area dominated by coniferous forests with minor components of hardwoods. The parcel has been subject to current and historic timber harvests with flats, roads and skid trails developed for the purpose of timber harvest. The applicant provided a timber conversion report, Timberland Resource Consultants October 2017, included as **Attachment 4E**. The Timber Conversion Report concluded that .36 acres of pre-2016 timber conversion had occurred. A review of air photos by planning department staff in June of 2022 indicated that additional tree cutting may have occurred after the 2016 Environmental baseline year when the property was under prior ownership. The applicant provided a Timber Conversion Analysis, Timberland Resource Consultants, June 2023, included as **Attachment 4F**. In the conversion report the registered professional forester identified .56 acres of post 2016 timber conversion. The report identifies the areas and method for the timber restoration. No freshly cut stumps or indications of tree cutting were identified during a site inspection on 9/21/2024. The project is conditioned for the applicant to complete the restoration detailed in the report (**Condition of Approval A.8**). The applicant is also conditioned to submit a revised site plan showing the restoration area. If the restoration area overlaps with the cultivation area 1 identified on the site plan (Attachment 1C), the applicant will be required to reduce the cultivation area so that the reforestation can be completed (**Condition of Approval A.11.a**). No new tree cutting is proposed as part of the project. CalFire referral replied with standard project conditions.

Security and Safety: The applicant has implemented security measures to safeguard the product and prevent nuisance from occurring on the property. Cultivation at the project occurs behind locked gates. The parcel is in an area known to have a Very High Fire Hazard Severity and is within the State Responsibility Area (SRA). The project was referred to CalFire and on August 24, 2017, and comments were received. CalFire recommended signing and building numbers and fuel modification standards (**Attachment 5D**). Building signage and maintaining appropriate fuel modification standards has been made a condition of approval.

Setbacks: One of the project's cultivation areas is located 250 feet to the east of a parcel, 317-182-006, that is owned by the State Lands Commission. The parcel was part of a federal lands dispensation that transferred the property to the State Lands Commission. The purpose of the land is to provide funding for schools. There is no current or projected recreational or educational on the parcel. The parcel may be subject to a timber harvest in the future; the proceeds from the timber sale be put into a state educational trust fund.

Tribal Consultation:

The project is located within the Bear River Band of the Rancheria's Aboriginal Ancestral Territory. The project was referred to the Bear River Band of Rohnerville Rancheria, and the Northwest Information Center (NWIC) August 24, 2017. NWIC had no record of any previous cultural resources for the project area, NWIC recommended consultation with the local tribal representatives. A response was received from the Bear River Band tribe on November 3, 2017, stating that the project did not appear to represent a source of significant impacts on cultural resources and requested that the applicant adhere to the Standard Inadvertent Discovery Protocols, and if cultural resources area discovered the applicants 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 (**Condition of Approval B.1**).

Public Trust Resources: The project is in the Mad River Watershed; the project is .75 miles south of the river. There are no watercourses on the parcel; the land slopes down towards the river but does not include any diversions or collection of surface waters. The Mad River provides recreational opportunities for swimming, boating, and fishing. The river also provides domestic and industrial water to much of the Humboldt Bay Region. The Mad River has been heavily modified and managed to provide community water. Ruth Lake Dam was put in place to meter water flow for downstream community use. Prior to the creation of dams on the Mad River, the river would effectively dry up in the summer months. The project utilizes a well for water. The well is unlikely to be connected to surface water resources and will therefore be unlikely to impact public trust resources on the mad river. The project has no impact on flows during the dry season, thus the use of the stored water for irrigation purposes will not cause any significant adverse impact to the Mad River or otherwise substantially impair the public trust uses or values related to commerce, navigation, fisheries, public access, preservation of trust lands in their natural state, or water-related-recreation and other activities.

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 Mad River Planning Watershed, which under Resolution 18-43 is limited to 334 permits and 115 acres of cultivation. With the approval of the project the total approved permits in this Planning Watershed would be 75 permits and the total approved acres would be approximately 27.51 acres of cultivation.

Environmental Review:

Environmental review for this project was conducted and based on this analysis, staff concludes that all aspects of the project have been considered in a previously adopted Mitigated Negative Declaration (MND) that was adopted for the CMMLUO. Staff prepared an addendum (Attachment 3) to the MND for consideration by the Planning Commission.

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)

ATTACHMENTS:

1. Draft 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. Notice of Applicability
 - B. Site Management Plan
 - C. LSA Notification
 - D. Well Completion Report
 - E. Timber Conversion Report
 - F. Restocking Plan
 - G. Road Evaluation
 - H. Northern Spotted Owl Assessment
5. Referral Agency Comments and Recommendations
 - A. California Department of Fish and Wildlife
 - B. CalFire
 - C. Humboldt County Department of Environmental Health
 - D. Humboldt Bay Municipal Water Dist.
6. Watershed Map

APPLICANT AND OWNER INFORMATION:

Applicant

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File #: 24-1541

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Please contact Andrew Whitney, Planner, at awhitney2@co.humboldt.ca.us or 707-268-3735 if you have questions about this item.