



COUNTY OF HUMBOLDT

For the meeting of: 3/2/2023

File #: 23-263

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

SUBJECT:

Burr Road, LLC, Conditional Use Permit and Special Permit
Assessor's Parcel Number: 222-083-007
Record Number: PLN-11949-CUP
1925 Old Somerville Creek Road, Briceland area

A Conditional Use Permit for an existing 15,000 square foot (SF) mixed light cannabis cultivation operation with 1,500 SF of ancillary propagation. Irrigation water is currently sourced from an existing groundwater well; however, the applicant proposes to switch to use of an already permitted spring diversion. Existing available water storage is 40,100 gallons in various hard-sided tanks with an additional 80,000 gallons proposed, for a total of 120,100 gallons of onsite water storage, including 1,100 gallons and 2,500 gallons dedicated to domestic and fire suppression use, respectively. Estimated annual water usage is 171,468 gallons. Drying, bucking, and processing occur onsite within an existing 1,500 SF structure. A maximum of four (4) persons will be onsite during peak operations. Power for cultivation is provided by two (2) generators, with a third generator utilized for back-up power. A Special Permit is also requested for development within the Streamside Management Area (SMA) for continued use and maintenance of the point of diversion infrastructure.

RECOMMENDATION(S):

That 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 Burr Road, LLC, project (Attachment 3); and
- b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
- c. Approves the Conditional Use Permit and Special Permit subject to the recommended conditions of approval (Attachment 1A).

DISCUSSION:

Project Location:

The project is located in the Briceland area, on the south side of Briceland Thorn Road, approximately 2 miles south from the intersection of Old Briceland Road and Old Somerville Creek Road, on the property known as 1925 Old Somerville Creek Road.

Present General Plan Land Use Designation:

Timberland (T), 2017 General Plan. Density: 40-160 acres per dwelling unit, Slope Stability: Moderate Instability (2).

Present Zoning:

Timberland Production Zone (TPZ).

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:

Burr Road, LLC, seeks a Conditional Use Permit to allow the continued cultivation of 15,000 square feet (SF) of existing mixed light cannabis cultivation, in addition to 1,500 SF of ancillary propagation, in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, Commercial Medical Marijuana Land Use Ordinance (CMMLUO). A Special Permit is also requested for development within the Streamside Management Area (SMA) for continued use and maintenance of the point of diversion infrastructure. The site is designated as Timberland (T) in the Humboldt County 2017 General Plan Update and zoned Timberland Production Zone (TPZ). Cultivation takes place in the eastern portion of the subject property and includes seven (7) existing flowering greenhouses with a total canopy of 13,100 SF. Under the project, the applicant is proposing to add two (2) additional flowering greenhouses (900 SF and 1,000 SF), for a total canopy of 15,000 SF, and a 1,500 SF propagation greenhouse. Two (2) harvests are anticipated annually for a growing season that extends from March through November.

Drying, bucking, and processing occur onsite within an existing 1,500 SF structure. A maximum of four (4) persons will be onsite during peak operations.

Cultivation and Nursery Space

As noted above, the application is for 15,000 SF of existing mixed light cannabis cultivation operation with 1,500 SF of ancillary propagation proposed. The onsite ancillary nursery would equate to 10% of the total current cultivation area, which is what planning division staff and the Planning Commission have found allowable in the past (i.e., a nursery space of 10% of the cultivation area). Based on the County's cultivation area verification, only 12,100 SF of cultivation was in existence prior to the CMMLUO environmental baseline date of January 1, 2016. Although the parcel is over 5 acres in size, irrigation will be derived from a diversionary water source (subject to a Special Permit), the cultivation and propagation areas have not been shown to occur on slopes less than 15% (natural slopes mapped as between 15 and 50% on the County's GIS), and the subject property is zoned TPZ. As a result, new cultivation could not be considered on the subject parcel. Planning staff recommends a condition of approval to reduce the overall amount of cannabis onsite (cultivation and nursery space) at any given time to a maximum of 12,100 SF, with the ancillary nursery space limited to a maximum of 10% of the cultivation area (or 1,210 SF), as well as revising both the Site Plan and Operations Plan accordingly (**Conditions of Approval A.6-7**).

Water Resources:

Currently, estimated annual water usage for the 13,100 SF of existing cannabis is approximately 128,668 gallons (9.82 gal/SF), with peak demand occurring in July and August at approximately 23,500 gallons,

respectively. With the additional 1,900 SF of cultivation and 1,500 SF of ancillary propagation proposed under the project, estimated annual water usage is projected to increase to approximately 171,468 gallons (10.39 gal/SF) with peak demand occurring in July and August at approximately 30,500 gallons, respectively, as shown in the table below.

Monthly Water Use Table

Month	Current Cannabis Use in Gallons	Projected Cannabis Use In Gallons	Domestic Use
January	0	0	6,000
February	0	0	6,000
March	0	0	6,000
April	10,667.5	16,467.5	6,000
May	13,500	21,000	6,000
June	19,000	25,500	6,000
July	23,500	30,500	6,000
August	23,500	30,500	6,000
September	22,000	24,500	6,000
October	16,500	23,000	6,000
November	0	0	6,000
December	0	0	8,500
Total	128,667.5	171,467.5	74,500

Water for irrigation is currently provided by an existing groundwater well, although the applicant is proposing to switch to use of a permitted spring diversion and add additional water storage on the subject site. The well is located in the central portion of the site, immediately south of Greenhouse #2 and approximately 125 feet away from the nearest Streamside Management Area (SMA), as per the Site Plan (Attachment 1D). Based on comments received from the Department of Environmental Health (DEH) in April 2021 (on file with Planning), DEH has no record of the well and the “owner shall either provide evidence of permit, destroy the well, legalize the well through installation of a new sanitary surface seal, or provide compelling evidence that the well was installed prior to February 1973.” A Special Permit is requested for development within the SMA related to continued use and maintenance of the point of diversion infrastructure. Planning staff is supportive of the Special Permit, as it is for an existing point of diversion that will be operated and maintained as required by the State Water Resources Control Board (SWRCB) and CDFW, thereby minimizing SMA impacts. As the well has not been assessed for hydrologic connectivity to surface waters, conditions of approval require the applicant to cease use of the well prior to the 2024 cultivation season (**Condition of Approval A.9**).

A *Right to Divert and Use Water* (Registration ID: H505220; Certificate No.: H100557) was issued by the SWRCB in December 2018 for use of the point of diversion from the unnamed spring for irrigation and fire protection (Attachment 4A). The unnamed spring is noted to be a tributary to Somerville Creek then Redwood Creek. The *Right to Divert and Use Water* allows for 0.18 acre-feet per year (or 58,653 gallons) of water to be diverted from the spring annually, with forbearance required between June 1st and October 31st. The rate of diversion to storage is limited to 42,000 gallons per day. Storage capacity cannot exceed 0.22 acre-feet (or 71,687 gallons). Existing available water storage is 40,100 gallons in sixteen (16) HDPE storage tanks ranging in size from 1,100 gallons to 3,000 gallons, with 1,100- and 2,500-gallon tanks dedicated to domestic and fire suppression use, respectively. An additional 80,000 gallons in HDPE tanks are proposed, for a total of 120,100 gallons of onsite water storage. Once the additional tanks are added, there would be a total of 116,500 gallons of onsite water storage dedicated for irrigation use. The storage tanks for domestic and fire suppression use will be filled via a separate domestic spring diversion and the well. While existing water storage used in accordance

with the *Right to Divert and Use Water* (36,500 gallons) is within the allowable amount, once the additional tanks are added to the site, the onsite water storage will exceed the amount of storage authorized under the appropriative right by approximately 44,813 gallons. As such, conditions of approval require the applicant to utilize a maximum of 71,687 gallons of onsite water storage for water diverted from the spring; alternatively, the applicant may obtain and submit a revised *Right to Divert and Use Water* modifying the allowable storage amount from the SWRCB (**Condition of Approval A.10**).

Planning staff finds the amount of water which can be diverted under the appropriative right (58,653 gallons) is not sufficient to meet the annual water demand of the project (171,468 gallons), resulting in a deficit of approximately 112,815 gallons annually, nor is the amount of water storage allowed under the appropriative right (71,687 gallons) sufficient to allow for forbearance requirements to be met (134,000 gallons required). As such, conditions of approval require the applicant to reduce the amount of cultivation on the subject site to the amount that can be supported by the amount of water that can be diverted and stored under the appropriative right, or 5,645 SF, until rainwater catchment infrastructure is added to the subject site OR the applicant obtains a revised *Right to Divert and Use Water* from the SWRCB (**Condition of Approval A.9**). This value was calculated by dividing the amount of water which can be diverted under the appropriative right (58,653 gallons) by the project's average water usage (10.39 gal/SF) anticipated at full project build-out. A minimum of 54,968 gallons of additional water storage (in addition to the 80,000 additional gallons already proposed by the applicant, for a total of for a total 171,468 gallons, equivalent to the project's estimated annual water use) shall also be installed onsite within a previously disturbed area to ensure sufficient water storage is available for the project, and may only be filled by rainwater catchment or the spring diversion once a revised *Right to Divert and Use Water* is obtained (**Condition of Approval A.11**).

Planning staff further calculated the rainwater catchment area necessary to fulfil the remaining water needs of the project (112,815 gallons). The average rainfall for the project area is approximately 63.9 inches, based on averaging rainfall values from 2012 through 2022 as recorded by PRISM Climate Group, with the lowest annual rainfall year being 22.8 inches in 2013 with the second lowest amount being 34.9 in 2020. Impermeable surfaces such as roofs, driveways, etc. in general allow for about 620 gallons of rainwater catchment per 1,000 SF for every inch of rainfall or 0.62 gallons per 1 SF. Based on this information, and using a more substantial drought year of 34.9 inches of rainfall, the applicant would need to add rainwater catchment infrastructure to structures with a minimum surface area of 5,214 SF in order to ensure enough water is available to support the project, which has been included as a condition of approval. Alternatively, the applicant may obtain a revised *Right to Divert and Use Water* from the SWRCB (**Condition of Approval A.9**). Additional conditions of approval require the applicant to monitor water use from the well (until use is required to cease prior to the 2024 cultivation season), spring diversion, rainwater catchment system (once operational), and water tanks annually to demonstrate there is sufficient water available to meet operational needs (**Condition of Approval A.25**).

As depicted on the Site Plan (Attachment 1D), the site contains a Class II (Somerville Creek) and two (2) Class III watercourses. Based on review of the County WebGIS and Site Plan, all cultivation areas are located outside of the required Streamside Management Area (SMA) buffers.

A Site Management Plan (SMP) was prepared by ETA Humboldt in October 2021 (Attachment 4B), that includes recommended best practices for erosion control, monitoring irrigation volumes to prevent runoff, and utilizing a secure storage facility for all cultivation-related materials, consistent with the SWRCB Order WQ 2017-0023-DWQ - General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities. The SMP recommends various improvements, including but not limited to roadway maintenance, regular culvert inspections, and locating

storage tanks, generators, and petroleum-powered pumps outside of riparian setbacks, to protect water quality and maintain necessary crossings. The project is conditioned to implement all remaining corrective actions detailed in the SMP (**Condition of Approval A.18**).

A Final Lake or Streambed Alteration Agreement (SAA; Notification No. 1600-2016-0094-R1; Attachment 4D) was issued by the California Department of Fish and Wildlife (CDFW) in July 2016, for three (3) encroachments, including an existing spring diversion for domestic use, and installation of a rocked ford and a culvert at Class III stream crossing locations, which will including excavation, placement of the culvert and rock armoring, and relocation of the fill material. The existing well used for irrigation is also included under the Final SAA. Conditions of approval require the applicant to implement any remaining projects and to comply with the conditions of the Final SAA (**Condition of Approval A.17**).

Biological Resources:

Per review of CDFW’s California Natural Diversity Database (CNDDDB), there are no mapped sensitive species onsite and the nearest NSO positive observation is located approximately 0.92 miles from the project area, with the nearest NSO activity center located approximately 1.14 miles away.

As previously described, power is provided by two (2) generators, with a third generator utilized for back-up. Artificial lighting is also utilized for the mixed light cultivation and ancillary propagation areas. Conditions of approval require the applicant to implement light and noise attenuation measures, refrain from using synthetic netting, ensure refuse is contained in wildlife proof storage, and refrain from using anticoagulant rodenticides to further protect wildlife (**Conditions of Approval A.21-24 and Ongoing Conditions of Approval B.1-7**). In addition, the applicant is required to transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026 (**Condition of Approval A.8**; see “Energy” subsection below for further discussion). As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively impact NSO or other sensitive species.

Energy:

Power for cultivation is sourced from three (3) onsite diesel generators. An *Energy Generation and Consumption Plan*, dated October 2021, was prepared for the project (Attachment 4G), which provides an overview of the project related materials requiring energy, a description of the three (3) diesel generators utilized onsite (25 kW, 45 kW, and 75 kW) and the amount of time each generator is utilized onsite on an annual basis. All power required for the operation is provided by two (2) generators, with an additional generator located on the subject site for back-up purposes. Only one (1) generator is noted to be in operation at any time. The 25 kW and 45 kW generators are used primarily for domestic purposes and ancillary propagation activities. The 75 kW generator is kept onsite for emergency back-up purposes, and is only used when both primary generators are non-functional. Provided below is an energy consumption table, which depicts how often reach generator is utilized onsite. As per the table, generators are utilized for approximately 3,840 total hours annually, with 2,310 hours (or 60% of the total usage), associated with cannabis activities, and the remaining 1,530 hours (or 40%), utilized for domestic use.

Energy Consumption Table

Type of Power Use	Hours per month												Total
	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	
Generator 45 kw Diesel Cannabis Operations	0	0	0	180	186	60	62	60	180	186	0	0	914 hours
25 kw Diesel Cannabis Operations (Hours in use while no domestic)	0	112	124	0	0	0	128	0	0	128	124	0	616 hours
25 kw Diesel Domestic Operations	196	178	196	190	196	190	196	196	190	196	190	196	2,310 hours
Total hours of energy generation Cannabis	0	112	124	180	186	60	190	60	180	314	124	0	2,310 hours
Total hours of energy generation Domestic	196	178	196	190	196	190	196	196	190	196	190	196	1,530 hours
Total hours of energy generation Property	196	290	320	370	382	250	386	256	370	510	314	196	3,840

Conditions of approval require the applicant to submit a revised energy use plan that describes the power demand for the project that includes a description of what power is required for (e.g., propagation, cultivation, and processing), how the size of the generator is reasonable based on the power demand, and how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026 (**Condition of Approval A.8**).

Access:

Access to the site is via a private drive off Old Somerville Creek Road (which traverses the site), a non-County-maintained road, via Old Briceland Road (a County-maintained road) to Briceland Thorne Road (a County-maintained Category 4 road). A Road Evaluation Report was prepared for the applicant by Steve Doyle of Six Rivers Construction and Consulting (dated July 6, 2018; Attachment 4F) for a 1.9-mile segment of Old Somerville Creek Road which indicates the roadway can accommodate the increased traffic from the proposed use. Per comments received from the Department of Public Works, Land Use Division in January 2023 (Attachment 5A), any existing or proposed non-county maintained access roads that will serve as access for the project that connect to a County maintained road shall be improved to current standards for a commercial driveway. Such improvements required include paving the access road (Old Somerville Creek Road) for a minimum width of 20 feet and a length of 50 feet where it intersects the County road (Old Briceland Road), which has been included as a condition of approval (**Condition of Approval A.14**). Additionally, all driveways and public road intersections onto the County Road shall be maintained in accordance with County Code Section 341-1 (Sight Visibility Ordinance) (**Condition of Approval A.15**).

As previously discussed, there will be a maximum of four (4) people onsite during peak operations, and, as this is an existing operation, a significant increase in traffic is not expected.

Geologic Suitability:

The project parcel is mapped in the County GIS as “moderate instability” (2). The natural slopes of the land where cannabis will be cultivated is between 15% and 50% as per the County GIS. The applicant will be required to secure permits for all structures and grading related to the cannabis cultivation and other commercial cannabis activity, including but not limited to, existing and proposed greenhouses, water tanks over 5,000 gallons, existing and proposed structures associated with drying, processing, and storage, or any activity with a nexus to cannabis, and any noise containment structures as necessary (**Condition of Approval A.12**).

Timber Conversion:

A review of available satellite imagery dating back to 2004 indicates that between 2005 and 2009 approximately 0.98 acres of timber was converted on the subject site, before the CMMLUO environmental baseline date of January 1, 2016. A Less Than Three Acre Conversion Exemption (1-15EX-101HUM) was issued by the California Department of Forestry and Fire Prevention (CAL FIRE) on April 6, 2015 (Attachment 4E), which authorized a total of 2.5 acres of timberland to be converted on the subject property. The converted areas appear to generally correspond with the timber conversion map included in the Less Than Three Acre Conversion Exemption; however, it appears a larger conversion area proposed within the southwestern portion of the subject property was not converted. Conditions of approval require the applicant to adhere to the terms of the Less Than Three Acre Conversion Exemption, including treatment of logging slash and woody debris and the winter operating plan (**Condition of Approval A.16**). No timber removal is proposed or authorized under this permit.

Security and Safety:

The operation is secured behind a locked entry gate located off Old Somerville Creek Road.

Tribal Consultation:

The project is within the historic aboriginal territory of the Bear River Band of the Rohnerville Rancheria and the Intertribal Sinkyone Wilderness Council. The project was referred to the Bear River Band of the Rohnerville Rancheria and the Intertribal Sinkyone Wilderness Council in April 2021. A Cultural Resources Investigation was performed by Arsenault and Associates (not dated, on file and confidential), in which no significant prehistoric or historic cultural resources were found and included the inadvertent discovery protocol. The final report was reviewed by the Bear River Tribal Historic Preservation Officer in October 2021, in which inclusion of the standard inadvertent discovery protocol was requested, which has been incorporated into the project as an informational note (**Informational Note C.3**).

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 located in the South Fork Eel Planning Watershed, which under Resolution 18-43 is limited to 730 permits and 251 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 301 permits and the total approved acres would be 90.8 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. Draft Resolution
 - A. Conditions of Approval
 - B. Cultivation and Operations Plan & Addendum
 - 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 Certificate
 - B. Site Management Plan
 - C. Notice of Applicability
 - D. Lake or Streambed Alteration Agreement
 - E. Less Than 3 Acre Conversion Exemption
 - F. Public Works, Land Use Division Road Evaluation Form
 - G. Energy Generation and Consumption Plan
5. Referral Agency Comments and Recommendations
 - A. Public Works, Land Use Division

Applicant

Burr Road, LLC
C/O Teodora Petrova
P.O. Box 2114
Redway, CA 95560

Owner

Petrushevski Dejan
P.O. Box 2114
Redway, CA 95560

Agent

ETA Humboldt
Vanessa Valare
P.O. Box 147
Phillipsville, CA 95559

Please contact Rodney Yandell, Assigned Planner, at ryandell@co.humboldt.ca.us or 707-445-7541 if you have any questions about the scheduled item.