

**COUNTY OF EL DORADO  
PLANNING AND BUILDING DEPARTMENT  
PLANNING COMMISSION  
STAFF REPORT**



**Agenda of:** May 12, 2022

**Staff:** Aaron Mount

**COMMERCIAL CANNABIS USE PERMIT**

**FILE NUMBER:** CCUP20-0001/Cybele Holding Commercial Cannabis Cultivation and Nursery

**APPLICANT:** Cybele Holdings

**AGENT:** Lee Tannenbaum

**REQUEST:** Commercial Cannabis Use Permit (CCUP) for the construction and operation of a cannabis cultivation and nursery facility for medicinal and adult-use recreational cannabis.

**LOCATION:** South end of Freshwater Lane approximately 1.5 miles south of the intersection Sand Ridge Road. The project site is located near the El Dorado and Amador County line, and it is generally situated east of State Route (SR) 49 and south of Sand Ridge Road, Supervisorial District 2 (Exhibit A).

**APN:** 046-071-011 and 046-071-010 (Exhibit D)

**ACREAGE:** approximately 180 acres

**GENERAL PLAN**

**LAND USE DESIGNATION:** Natural Resource (NR) (Exhibit F)

**ZONING DESIGNATION:** Limited Agriculture, 40-acre Minimum (LA-40) (Exhibit G)

**ENVIRONMENTAL DOCUMENT:** Mitigated Negative Declaration

**RECOMMENDATION:** Staff recommends the Planning Commission take the following actions:

1. Adopt the Mitigated Negative Declaration based on the Initial Study prepared by staff;
2. Adopt the Mitigation Monitoring and Reporting Program (MMRP) in accordance with the CEQA Guidelines Section 15074(d), incorporated as Conditions of Approval; and
3. Approve Commercial Cannabis Use Permit CCUP20-0001 based on the Findings as presented, subject to the conditions of approval as presented.

## **EXECUTIVE SUMMARY**

The project applicant proposes to construct a commercial cannabis cultivation and nursery facility. The proposal would include two sites within the project parcels that will phase from outdoor cultivation to mixed light cultivation. One of the two sites was previously utilized for the cultivation of industrial hemp. Chapter 130.41 of the Zoning Ordinance requires approval of a Commercial Cannabis Use Permit for all commercial cannabis uses. The project is proposed on parcels within the Limited Agriculture, 40-acre Minimum (LA-40) zone district (Exhibit G) consistent with the Natural Resources (NR) General Plan Land Use Designation (Exhibit F). Staff has determined that the proposed project is consistent with the applicable El Dorado County General Plan policies and Zoning Ordinance requirements, as discussed in the Findings.

## **PRE-APPLICATION**

A pre-application was filed for the project site under CCPA20-0002 on January 13, 2020. The pre-application is utilized to identify any preliminary issues/comments. During the pre-application it was determined that the use required approval of a Commercial Cannabis Use Permit and that the ownership of the parcel did not qualify for a reduction in setbacks for cultivation.

## **BACKGROUND / HISTORY**

State Background History:

The State of California has been regulating cannabis since 1996 with the passage of Proposition 215 the "Compassionate Use Act," the first medical cannabis regulation in the United States. In 2003, Senate Bill 420, developed the medical marijuana identification cards. The next significant change in regulation came twelve years later in 2015.

The Medical Cannabis Regulation and Safety Act ("MCRSA"), consisting of Assembly Bill (AB) 243, AB 266 and Senate Bill (SB) 643, was signed by the Governor on October 9, 2015. This legislation established a comprehensive framework for the regulation of commercial cannabis, covering a broad array of topics including cultivation, nurseries, delivery, transportation, manufacturing, environmental standards and enforcement, general enforcement, advertising and labeling, employer/workplace restrictions, appellation/organic standards, fees

and taxation, safety standards, criminal penalties, and tracking and tracing systems. MCRSA also establishes a dual licensing scheme under which anyone engages in commercial cannabis activity must first obtain a local permit, and then a state license. The state law defers to local land use authority and local jurisdiction may ban cannabis uses altogether or further limit the allowances under state law.

On November 8, 2016, California voters approved Proposition 64, which is the initiative known as the Adult Use of Marijuana Act ("AUMA"). AUMA would allow local jurisdictions to decide whether to allow non-medical cannabis uses, except for personal use and cultivation, which must be permitted indoors with reasonable regulations.

On June 27, 2017, the Governor signed into law, Senate Bill (SB) 94, which repealed the MCRSA, including certain provisions of the MCRSA in the licensing provision of the AUMA, and created a single regulatory scheme for both medical and no-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA retained the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether cannabis businesses could operate in a particular jurisdiction. Specifically, California Business and Professions Code Section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction.

Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a cannabis business if approval of the State license will violate the provision of any local ordinance or regulation. The MAUCRSA required that a State licensing authority shall begin issuing licenses to cannabis businesses beginning January 1, 2018.

#### State Law and Licensing Requirements:

Legislation under the Medical Cannabis Regulation and Safety Act (MCRSA) protects local control via dual licensing: all marijuana businesses must have both a state license and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban commercial medical marijuana will be able to retain their regulations or ban. Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency. The types of permits allowed under the MCRSA including commercial cultivation, retail storefronts (dispensaries), manufacturing, testing labs, transporters, and distributors. Delivery services may occur if permitted by the local agency (or if the local jurisdiction does not explicitly prohibit delivery services) and must be associated to a storefront or non-storefront retail location.

#### El Dorado County Cannabis Ordinances:

On July 17, 2018, the El Dorado County Board of Supervisors placed five ballot measures on the ballot for the November 2018 election, which enabled voters to decide whether to allow different aspects of commercial cannabis and its taxation. The ballot measures named Measure N (taxation, permitting and enforcement of commercial cannabis), Measure P (commercial outdoor and mixed-light cultivation of cannabis for medicinal use), Measure Q (commercial outdoor and mixed-light cultivation of cannabis for recreational adult use), Measure R (retail sale, commercial distribution, and commercial indoor cultivation of cannabis for medicinal use), and Measure S (retail sale, commercial distribution, and commercial indoor cultivation of cannabis for recreational adult use). In November 2018, the voters of El Dorado County passed the ballot measures creating a commercial cannabis program in the County that was developed after numerous meetings with stakeholders. These efforts resulted in ballot measures that, if approved by the voters, enacted ordinances that sought to balance the desire for a commercial cannabis program with concerns raised in the community about impacts to communities from such a program.

A critical piece of this program was the involvement of the Sheriff's Office in reviewing the criminal history of applicants and making recommendations on applications based on that criminal history. This process was included in the ballot measures and is now codified in County Code section 130.41.100(4)(G). Consistent with state and federal law, the Sheriff's Office sought to obtain approval from the California Department of Justice and the Federal Bureau of Investigation to utilize Live Scan criminal history access for this licensing purpose. The Sheriff's Office initiated that process in December 2019, however, has experienced significant delays in the approvals due to Covid and changes in the form of resolution the FBI is now requesting for such approvals. Up until February 19, 2021, the Sheriff's Office anticipated receipt of the approval, however, was informed on that date that a new application would be required. The County has acted swiftly to pursue a new resolution authorizing Live Scan access, but recognizes that this change in circumstance would take six months or longer.

In light of the anticipated delay with a new application for Live Scan access for this licensing purpose, the El Dorado County Planning and Building Department, Sheriff's Office, and County Counsel's Office collaborated to implement a procedure that complies with section 130.41.100(4)(G) and allows applications to continue in the permitting process. Generally, section 130.41.100(4)(G) will be implemented through an interim process until the Sheriff's Office receives the approvals necessary to utilize Live Scan.

## **PROJECT INFORMATION**

### **SITE DESCRIPTION**

The proposed project would be located on a 180-acre property in the southern El Dorado County area at 3029 Freshwater Lane, El Dorado, California. The property consists of two parcels: APN 046-071-011 (139.5 acres) and APN 046-071-010 (40.0 acres), but construction and operation of the cannabis cultivation facility would only occur on 5.5 acres on APN 046-071-011. The proposed project consists of two cannabis cultivation areas (Sites 1 and 2) that would be situated within the 5.5-acre, relatively flat-lying area located near the upper elevations of the property (see Figure 1). The property is accessible via a private, graveled road that branches off of Freshwater Lane. The property is designated for Natural Resource (NR) in the County's General Plan, and it is within the Limited Agriculture, 40-acre minimum (LA-40) zone district.

When the permit application was deemed complete by the County on April 13, 2020, the project property was undeveloped and sparsely wooded land which serves as the baseline site conditions for this CEQA analysis. The site consists of mountainous terrain with its elevation ranging from approximately 1,000 feet to 1,830 feet amsl. Drainage within the project site generally runs south, and eventually flows into the Middle Fork Cosumnes River which lies at the bottom of the project property. The property is bound to the north by a rural residential property, to the east and south by the Middle Fork Cosumnes River and wooded land, and to the west by wooded land. The project site was partially burned in the 2014 Sand Fire, and according to the project applicant, was used as a staging area for the California Department of Forestry and Fire Protection (CAL FIRE). Prior to recent grading for a County-approved hemp growing operation, the project site consisted of mixed oak woodland, coniferous woodland, ruderal/disturbed land, and non-native annual grassland.

Since the CCUP permit application was deemed complete by the County, the project applicant obtained a permit from the County Department of Agriculture to cultivate industrial hemp on-site in the areas that are currently proposed for cannabis cultivation. Current site conditions are reflective of a dormant industrial hemp cultivation operation. Site 1 of the project site was cleared of vegetation, graded, and planted with industrial hemp plants in 2020. Approximately 14,403 sf of oak woodland was removed from Site 1 to allow for the industrial hemp operation. Along with the clearing and planting of industrial hemp on Site 1, a new, solar-powered water well was constructed for hemp crop irrigation, irrigation lines and water storage tanks were installed, and a gravel parking area was established. Grading of Site 2 has not yet occurred but that would be necessary for the proposed cannabis cultivation. No additional tree removal is proposed for cannabis cultivation on Site 2. The project's tree removal requirements are documented and discussed in the Oak Resource Technical Report that was prepared for the proposed cannabis cultivation project and included as Exhibit I Appendix B of the Initial Study (NIC 2020b).

## **PROJECT DESCRIPTION**

The project applicant is seeking a Commercial Cannabis Use Permit (CCUP) for the construction and operation of a cannabis cultivation and nursery facility on 5.5 acres. The first cannabis cultivation compound (Site 1) would contain approximately 45,000 square feet (sf) of cannabis cultivation while the second compound (Site 2) would contain approximately 30,000 sf of cultivation. Additionally, the project would include a 1-acre nursery operation, a 2,000-sf main building with an office and processing room, a 2,500-sf building with storage and drying rooms, and a solar array system to power the proposed structures. Up to twenty-four (24) greenhouses would be installed on Site 1 and up to fourteen (14) greenhouses would be installed on Site 2. The proposed greenhouses would each be approximately 2,700 sf (30' x 90') and combined would house a maximum of 2 acres of cannabis cultivation at any one time in addition to the proposed 1-acre of nursery.

Phase I of the proposed project would solely consist of outdoor cultivation, totaling approximately 45,000 sf of cannabis canopy at Site 1. Eventual buildout of Phase II would add approximately 30,000 sf of cannabis canopy at Site 2. The 30,000 sf of cannabis canopy proposed in Phase II would be housed within approximately fourteen (14) greenhouses. Phase II would also include construction of twenty-four (24) greenhouses on Site 1 to convert the 45,000 sf of outdoor cannabis cultivation to mixed light cannabis cultivation. The greenhouses are anticipated to be 2,700 sf each and would include solar panels on their roofs to power the proposed mixed light cannabis cultivation. The final sizes of the greenhouses would be determined upon final project design and is subject to variation. The total cannabis cultivation area after the final buildout of Phase II would not exceed two acres of cannabis cultivation at any one time, plus the nursery growing area. The proposed two acres of cannabis cultivation may be a mix of outdoor and mixed light as the project transitions. The total square footage of greenhouses at maximum capacity (when Sites 1 and 2 are completely built out) would be approximately 120,000 sf (3 acres) and consist of 2 acres of cannabis canopy with 1 acre of nursery/commercial nursery.

## **STAFF ANALYSIS**

### **Employees**

Under the most conservative (i.e., the busiest) assumptions, during peak season when both phases of the project are fully operational, up to 20 employees would be on-site. The actual number would be lower most days since several of these employees would be seasonal to assist only during the busiest time of year, and some of the security employees included in this number would not work concurrent shifts. Up to six full-time employees would work on production and administrative tasks, five employees would provide security on staggered schedules, and up to nine seasonal employees would assist with cultivation and harvesting as needed.

### **Odor**

An Odor Control Plan was prepared by Natural Investigations Company, Inc. in February of 2020 for the proposed project and is included as Exhibit I Appendix A of the Initial Study. The Odor Control Plan describes the potential sources of odors from the project, outlines an Odor Monitoring Program, and prescribes an Odor Response Program to evaluate and respond to odor complaints. To minimize any potential odor impacts from project operation, the project applicant

shall implement all of the recommended measures in the Odor Control Plan as a Condition of Approval. Further, a Supplemental Odor Assessment was prepared for the proposed project in April of 2021 (EPS 2021). This assessment is included as Appendix G of the Final Initial Study. That report used meteorological data for the project area, modeling, and odor sampling from a similar cannabis facility to determine that odors would be well below acceptable County thresholds at the property lines of the proposed site and would be even lower before reaching nearby residences and other occupied areas of nearby properties. The report found stated that, while it could not be guaranteed that odors would never reach neighbors, distance, dispersion, and physical features (such as the Cosumnes River and its associated valley) would prevent odors from being detectable by neighbors in a majority of circumstances.

#### Security Plan

A Security Plan was prepared by Matthew Carroll of Carroll Security Consulting. Section 130.41.100.4.F.13 of the Zoning Ordinance states that the security plan shall remain confidential. The plan includes a variety of security measures including fencing, deterrence, background checks of employees, training, surveillance and alarm systems, engineering controls to limit access to sensitive areas, systems for authorizing and monitoring site workers and visitors, and measures to respond to potential break ins and robberies. Private security would be obtained by the project applicant. Services contracted would include the following, at minimum:

- Intrusion alarm response with a guaranteed response time of 30 minutes or better;
- On-call uniformed guard services as a contingency to failing surveillance or alarm infrastructure; and
- 24/7, armed guard coverage during harvest season (winter months).

Video Security System, 24 hour video monitoring, with minimum of 90 day archiving. The surveillance system storage device or cameras must be transmission control protocol (TCP) capable of being accessed from the internet

#### Site Access/Parking

The site is accessed by a gated driveway from Freshwater Lane; a neighboring property also uses a section of that driveway for ingress and egress to their private residence. Freshwater Lane is a private road that has a shared maintenance agreement between all owners of parcels that access it. The road is narrow (from 14 to 18 feet wide) and partially paved. The paved portion is from Sand Ridge Road to a point approximately 0.5 miles south of Sand Ridge Road, where it becomes a dirt road. It is covered in gravel beyond the intersection of Tumbleweed Road. The project's shared gated driveway is located approximately 1.5 miles south of Sand Ridge Road. The gate is approximately 185 feet inward from Freshwater Lane.

An approximately 7,200-sf gravel parking area was constructed on site after commencement of the environmental analysis and is located adjacent to the north of the proposed buildings. The parking lot provides a total of 15 parking spaces for the project owner(s), employees, and any authorized guests. A site plan with the proposed parking lot was submitted to the County and has been evaluated by the local Fire Department, which found that the parking plan meets standards and provides adequate fire engine access

#### Lighting

Mixed light greenhouses can be a significant source of light pollution if not managed correctly. Zoning Ordinance Policy 130.41.200.5.J requires that all lights used for mixed-light cultivation shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process and that artificial lighting for mixed-light cultivation is limited to a rate of six watts per square foot or less. Light deprivation covers for mixed light greenhouses are designed to block out the sun's light and are effective in eliminating night time light spillage. Conditions have been imposed that ensure that the project adheres to this requirement and that all lighting is consistent with Zoning Ordinance requirements.

### **AGENCY COMMENTS:**

The project was distributed to all applicable local, County and state agencies for review and comment. Comments were received from the Office of the County Surveyor, County Department of Transportation, Air Quality Management District, Diamond Springs/El Dorado Fire protection District, and the County Environmental Management Division. None of these agencies or departments expressed any significant issues or concerns regarding this project. These agencies provided standard and project specific conditions of approval which have been incorporated into the project.

### **CONSISTENCY**

**General Plan Consistency:** The project is located within the Rural Region with the General Plan designating the project site as Natural Resources (NR) (Exhibit F). As proposed, the project would be consistent with the standards established by the NR land use designation. Staff has determined the proposed project is consistent with the applicable policies and requirements of the El Dorado County General Plan, such as discussed below in Section 2.0 of the Findings.

**Zoning Ordinance Consistency:** The proposed use is consistent with the Limited Agriculture, 40-acre Minimum (LA-40) zone district as commercial cannabis cultivation and nursery facilities are allowed within the LA zone district with the approval of a Commercial Cannabis Use Permit. The project has been analyzed in accordance with Zoning Ordinance Chapter 130.41 (Commercial Cannabis) for applicable development standards. As proposed, the project would be consistent with the development standards of the LA zone district and Zoning Ordinance Chapter 130.41. Staff has determined the proposed project is consistent with the applicable policies and requirements of the El Dorado County Zoning Ordinance as discussed below in Section 3.0 of the findings.

### **PUBLIC OUTREACH**

**Public Notification:** Section 130.41.100.4.B of the Zoning Ordinance states that prior to the hearing before the Planning Commission, notice of the application shall be provided pursuant to Section 130.04.015. If a commercial cannabis activity is proposed within a one-half mile radius of an incorporated city or county, notice of and an opportunity to comment on the application for the Commercial Cannabis Use Permit shall be provided to the applicable city or county before the permit is considered by the Planning Commission. As a Commercial Cannabis Use Permit it would have a notification radius of 1,000 feet from the subject property, with a notice in the



Mountain Democrat. The project site is not located within a one-half mile radius of an incorporated city or county.

Public Outreach: No formal public outreach was conducted as a public outreach plan is not required for commercial cannabis projects pursuant to the County Zoning Ordinance. Planning recommended and the applicant agreed to contact adjacent property owners directly.

## **ENVIRONMENTAL REVIEW**

A CEQA Initial Study was prepared analyzing the potential impacts the project may have on the project site (Exhibit I). There is no substantial evidence that the proposed project would have a significant effect on the environment and a Mitigated Negative Declaration has been prepared. Mitigation Measure BIO-1 would protect any possible future impact to biological resources, specifically special status species plants and wildlife. The public review period for the Draft MND set forth in CEQA for this project is 30 days, and took place beginning January 23, 2021, and ending February 22, 2021. Comments received are included in Exhibit I and include responses. The final Initial Study incorporated applicable comments and additional odor modeling.

The applicant shall submit to Planning Services a \$50.00 recording fee and the current Department of Fish and Wildlife fee prior to filing of the Notice of Determination by the County. Please submit check for the total amount to Planning Services and make the check payable to El Dorado County. No permits shall be issued until said fees are paid.

## SUPPORT INFORMATION

### Attachments to Staff Report:

#### Findings

#### Conditions of Approval

#### Exhibits

Exhibit A.....	Vicinity Map [County/Region]
Exhibit B.....	Location Map
Exhibit C.....	Aerial Map
Exhibit D.....	Assessor's Parcel Map
Exhibit E.....	Topography
Exhibit F.....	General Plan Land Use Designation Map
Exhibit G.....	Zoning Designation Map
Exhibit H.....	Preliminary Site Plan
Exhibit I.....	Proposed Mitigated Negative Declaration and Initial Study
Exhibit J.....	Letter from the El Dorado County Sheriff's Office
Exhibit K.....	Security Plan