

FINDINGS

Commercial Cannabis Use Permit CCUP21-0002/Harde Planning Commission/January 25, 2024

1.0 CEQA FINDINGS

- 1.1 El Dorado County has considered the Mitigated Negative Declaration (MND) together with the comments received during the public review process. The MND and associated Mitigation Monitoring and Reporting Program (MMRP) reflect the independent judgment of the County and have been completed in compliance with the California Environmental Quality Act (CEQA) and are adequate for this project.
- 1.2 No significant impacts to the environment as a result of this project were identified in the Initial Study.
- 1.3 The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Planning and Building Department at 2850 Fairlane Court, Placerville, CA, 95667.

2.0 GENERAL PLAN FINDINGS

2.1 The project is consistent with General Plan Policy 2.2.1.2.

General Plan Policy 2.2.1.2 is applied to lands described in Policy 8.1.1.8. A maximum of two (2) residential dwellings used to support agricultural use are allowed. The Agricultural Lands (AL) designation may be applied in Rural Regions only.

Rationale: Development of the commercial cannabis cultivation is consistent with this policy. Commercial cannabis cultivation and nurseries are allowed by approval of a Commercial Cannabis Use Permit (CCUP) within the Planned Agriculture, 20-acre Minimum (PA-20) zone district. The PA zone district is consistent with the AL land use designation. The site is within a Rural Region. The proposed project is compatible with the land use designation.

2.2 The project is consistent with General Plan Policy 2.2.5.2.

General Plan Policy 2.2.5.2 requires that all applications for discretionary projects or permits shall be reviewed to determine consistency with the policies of the General Plan.

Rationale: The project has been reviewed in accordance with General Plan Policy 2.2.5.2 and has been found to be consistent with all applicable policies of the General Plan. As conditioned, the proposal is consistent with the intent of the General Plan, as determined within the General Plan Findings.

2.3 The project is consistent with General Plan Policy 2.2.5.21.

General Plan Policy 2.2.5.21 requires that development projects be located and designed in a manner that avoids incompatibility with adjoining land uses.

Rationale: The project site is currently developed for agricultural uses. The adjoining properties to the east are similarly within the PA-20 zone district. Parcels to the south, west, and north Residential Estate (RE) and Rural Lands (RL) zoning designations. The project is consistent with the development standards within Section 130.41.200 of the Zoning Ordinance - Outdoor and Mixed-Light Cultivation of Commercial Cannabis; therefore, the project has been located and designed to be compatible with adjoining land uses.

2.4 The project is consistent with General Plan Policy 5.1.2.1

General Plan Policy 5.1.2.1 requires a determination of the adequacy of the public services and utilities to be impacted by that development.

Rationale: The project proposes to utilize a well for water and a solar system for electricity.

2.5 The project is consistent with General Plan Policy 5.1.2.2

General Plan Policy 5.1.2.2 requires provision of public services to new discretionary development shall not result in a reduction of service below minimum established standards to current users, pursuant to Table 5-1.

Rationale: Both the Pioneer Fire Protection District and the El Dorado County Sheriff's Office (EDSO) have stated that they can provide service that meets minimum established standards. EDSO requires that the site's surveillance system storage device or cameras must be transmission control protocol (TCP) capable of being accessed from the internet so that law enforcement can evaluate the situation in real time before responding. All applicable agencies identified in Table 5-1 of the General Plan were sent the project, and no agency responded that the impact of the project would exceed the minimum level of service.

2.6 The project is consistent with General Plan Policy 5.2.1.2.

General Plan Policy 5.2.1.2 requires that adequate quantity and quality of water for all uses, including fire protection, be provided with proposed development.

Rationale: The project was reviewed by the Pioneer Fire Protection District for adequate fire protection services capacity. The site will be served by a well that was permitted by the County and has adequate flow rate. The project, as conditioned, is consistent with this policy.

2.7 The project is consistent with General Plan Policy 5.7.1.1.

General Plan Policy 5.7.1.1 requires the applicant to demonstrate that adequate emergency water supply, storage, conveyance facilities, and access for fire protection would be provided concurrent with development.

Rationale: The Pioneer Fire Protection District and CalFire currently provide fire protection services to the project site. The department has imposed Conditions of Approval to ensure adequate water supply, storage, conveyance, and site access for fire protection remains adequate for the project. The site will be served by a well that was permitted by the County and has adequate flow rate. A fire safe plan approved by the department and CalFire will be implemented at the project site.

2.8 The project is consistent with General Plan Policy 5.7.2.1.

General Plan Policy 5.7.2.1 requires that prior to approval of new development, the responsible fire protection district shall be requested to review all applications to determine the ability of the district to provide protection services. The ability to provide fire protection to existing development shall not be reduced below acceptable levels as a consequence of new development. Recommendations such as the need for additional equipment, facilities, and adequate access may be incorporated as conditions of approval.

Rationale: The Pioneer Fire Protection District and CalFire currently provide fire protection services to the project site. Approval of the subject project is conditioned on meeting the public safety and fire protection requirements of the County of El Dorado General Plan, which shall include the provision of a financing mechanism for said services.

2.9 The project is consistent with General Plan Policy 5.7.3.1.

General Plan Policy 5.7.3.1 requires that prior to approval of new development, EDSO shall be requested to review all applications to determine the ability of the department to provide protection services. The ability to provide protection to existing development shall not be reduced below acceptable levels as a consequence of new development. Recommendations such as the need for additional equipment, facilities, and adequate access may be incorporated as conditions of approval.

Rationale: EDSO has reviewed the project including the security plan, background check of the owners, spouses, and Designated Local Contact, and has inspected the site. EDSO requires that the site's surveillance system storage device or cameras must be TCP capable of being accessed from the internet so that law enforcement can evaluate the situation in real time before responding. EDSO has concluded that the department is able to provide law enforcement services for the site. No agency identified that the project would exceed service capacity.

2.10 The project is consistent with General Plan Policy 6.2.2.2, 6.2.3.1, 6.2.3.2.

General Plan Policy 6.2.2.2 requires that the County shall preclude development in areas of high and very high wildland fire hazard or in areas identified as wildland-urban interface (WUI) communities within the vicinity of Federal lands that are a high risk for wildfire, as listed in the Federal Register Executive Order 13728 of May 18, 2016, unless such development can be adequately protected from wildland fire hazard, as demonstrated in a WUI Fire Safe Plan prepared by a qualified professional as approved by the El Dorado County Fire Prevention Officers Association. The WUI Fire Safe Plan shall be approved by the local fire protection district having jurisdiction and/or California Department of Forestry and Fire Protection. (Resolution 124- 2019, August 6, 2019).

General Plan Policy 6.2.3.1 requires that as a requirement for approving new development, the County must find, based on information provided by the applicant and the responsible fire protection district, that concurrent with development, adequate emergency water flow, fire access, and fire fighting personnel and equipment will be available in accordance with applicable State and local fire district standards.

General Plan Policy 6.2.3.2 requires the applicant demonstrate that adequate access exists or can be provided to ensure that emergency vehicles can access the site and private vehicles can evacuate the area.

Rationale: The Pioneer Fire Protection District and CalFire currently provide fire protection services to the project site. The Department has imposed Conditions of Approval to ensure site access for fire protection remains adequate for the project. A fire safe plan approved by the Department and CalFire will be implemented at the project site to ensure that adequate resources for fire protection will be available onsite.

2.11 The project is consistent with General Plan Policy 8.1.4.1.

General Plan Policy 8.1.4.1 requires that the County Agricultural Commission shall review all discretionary development applications and the location of proposed public facilities involving land zoned for or designated agriculture, or lands adjacent to such lands, and shall make recommendations to the reviewing authority. Before granting approval, a determination shall be made by the approving authority that the proposed use:

- A. Will not intensify existing conflicts or add new conflicts between adjacent residential areas and agricultural activities;
- B. Will not create an island effect wherein agricultural lands located between the project site and other non-agricultural lands will be negatively affected; and
- C. Will not significantly reduce or destroy the buffering effect of existing large parcel sizes adjacent to agricultural lands.

Rationale: Section 130.41.200.5.N of the Zoning Ordinance states, “An application for a Commercial Cannabis Use Permit for outdoor or mixed-light cultivation must be reviewed by the Agricultural Commission and the recommendation of the Agricultural Commission, including any suggested conditions or restrictions, shall be forwarded to and considered by the Planning Commission.” The project was reviewed at the Agricultural Commission’s regularly scheduled meeting held on August 18, 2021. The Agricultural Commission recommended approval of Agricultural Department staff’s recommendations of support based on the analysis of compliance with pertinent General Plan policies.

2.12 The project is consistent with General Plan Policy TC-Xd.

Level of Service (LOS) for County-maintained roads and State highways within the unincorporated areas of the County shall not be worse than LOS E in the Community Regions or LOS D in the Rural Centers and Rural Regions except as specified in Table TC-2. The volume to capacity ratio of the roadway segments listed in Table TC-2 shall not exceed the ratio specified in that table. LOS will be as defined in the latest edition of the Highway Capacity Manual (Transportation Research Board, National Research Council) and calculated using the methodologies contained in that manual. Analysis periods shall be based on the professional judgement of the Department of Transportation which shall consider periods including, but not limited to, Weekday Average Daily Traffic (ADT), AM Peak Hour, and PM Peak hour traffic volumes.

Rationale: This project will be located in a Rural Region and does not worsen (as defined by General Plan Policy TC-Xe) LOS for any County-maintained road or State highway.

2.13 The project is consistent with General Plan Policy TC-Xe.

For the purposes of this Transportation and Circulation Element, “worsen” is defined as any of the following number of project trips using a road facility at the time of issuance of a use and occupancy permit for the development project:

- A. A two (2) percent increase in traffic during the a.m. peak hour, p.m. peak hour, or daily;
or
- B. The addition of 100 or more daily trips; or
- C. The addition of 10 or more trips during the a.m. peak hour or the p.m. peak hour.

Rationale: This project will generate fewer than 10 trips in the peak hour, and fewer than 100 daily trips. The thresholds in criteria A, B, or C of this policy are not met. The cannabis farm will be required to report travel data to the Department of Transportation annually. If the thresholds of this policy are met in the future, a Traffic Study will be required with permit renewal.

3.0 ZONING FINDINGS

3.1 The project is consistent with Title 130.

The parcel is within the PA-20 zone district. The PA zone applies to the development of agricultural enterprises and uses whether encumbered by a farmland conservation contract or not. This zone shall be utilized to identify those lands most capable of supporting horticulture, aquaculture, ranching, and grazing.

Rationale: The project has been analyzed in accordance with Zoning Ordinance Section 130.21.020 (Agricultural, Rural, and Resource Zone Districts Use Matrix) for allowable uses. The proposed use is consistent with the PA-20 zone district as commercial cannabis cultivation and nursery facilities are allowed within the PA-20 zone district with the approval of a CCUP. The project has been analyzed in accordance with Zoning Ordinance Chapter 130.41 (Commercial Cannabis) for applicable development standards.

3.2 The project is consistent with Chapter 130.34.

Chapter 130.34 of the Zoning Ordinance establishes outdoor lighting requirements for developments with additional standards found in the Community Design Standards.

Rationale: The proposed project is consistent with the outdoor lighting standards. Conditions have been imposed requiring all lighting to be consistent with Chapter 130.34; therefore, this proposal will remain consistent with outdoor lighting standards.

3.3 The project is consistent with Section 130.41.200.

Section 130.41.200 requires that outdoor and mixed light cultivation of commercial cannabis shall be subject to Planning Commission approval of a CCUP.

Rationale: This project is a CCUP to allow for the construction and operation of a cannabis cultivation facility.

3.4 The project is consistent with Section 130.41.200.4.A

Section 130.41.200.A requires that outdoor or mixed-light commercial cannabis cultivation may only be permitted in Rural Lands, PA, Limited Agricultural (LA), and Agricultural

Grazing (AG) zoned districts subject to a CCUP and Commercial Cannabis Annual Operating Permit (CCAOP) under Section 130.41.100.

Rationale: The project parcel is within the PA-20 zone district.

3.5 The project is consistent with Section 130.41.200.4.B

Section 130.41.200.4.B requires that outdoor or mixed-light cultivation of commercial cannabis be limited to sites that meet the minimum premises area of 10 acres.

Rationale: The project parcel is 57.29 acres in size.

3.6 The project is consistent with Section 130.41.200.4.C.

Section 130.41.200.4.C requires outdoor or mixed-light commercial cannabis cultivation be subject to the following limits on maximum canopy based on zone district:

Lots zoned PA with a minimum premises of 10 acres: Up to 1.5 percent of the size of the premises with a maximum of one (1) outdoor or mixed-light cultivation operation per premises, but not to exceed 10,000 square feet of total canopy coverage for that premises, including any designated nursery area with mature plants and excluding any designated nursery area with only immature plants.

Rationale: The project's Conditions of Approval and State licensing restrict the total cultivation canopy to 68,000 square feet.

3.7 The project is consistent with Section 130.41.200.5.B.

Section 130.41.200.5.B requires that outdoor or mixed-light commercial cannabis cultivation not be located within 1,500 feet from any school, school bus stop, place of worship, park, playground, childcare center, youth-oriented facility, pre-school, public library, licensed drug or alcohol recovery facility, or licensed sober living facility.

Rationale: The project has been found to not be within 1,500 feet from any school, school bus stop, place of worship, park, playground, childcare center, youth-oriented facility, pre-school, public library, licensed drug or alcohol recovery facility, or licensed sober living facility.

3.8 The project is consistent with Section 130.41.200.5.C.

Section 130.41.200.5.C requires that outdoor or mixed-light cultivation of commercial cannabis shall be setback a minimum of 800 feet from the property line of the site or public right-of-way and shall be located at least 300 feet from the upland extent of the riparian vegetation of any watercourse.

Rationale: The project cultivation area is approximately 470 feet from the eastern and northern property lines, is greater than 800 feet from the western and southern property lines, and at least 300 feet from the upland extent of the riparian vegetation of any watercourse (Exhibit D). While the project does not meet the 800-foot setback to the north, and east, Section 130.41.100.C of the El Dorado County Zoning Ordinance allows for any setback to be reduced for a commercial cannabis activity in a CCUP, so long as the applicant demonstrates that the actual setback will substantially achieve the purpose of the required setback and that the parcel was owned or leased by the applicant before voter approval of the ordinance from which this Cannabis Section is derived on October 18, 2022. An odor study (Exhibit H) was prepared demonstrating that the proposed project would not exceed the seven (7) dilution threshold (DT) at all property lines with mitigation incorporated (Condition of Approval No. 25). Security lighting would be motion activated. The project applicant took ownership of the subject property in 2013 prior to the voter approval of the Cannabis Ordinance in 2018. There would be no public sales or consumption onsite. The proposed setback will substantially achieve the purpose of the required setback. With a reduction of the setbacks the project would comply with this section.

3.9 The project is consistent with Section 130.41.200.5.D

Section 130.41.200.4.B requires that any cannabis odor shall not be equal or greater than a seven (7) DT when measured by the County with a field olfactometer at the property line on which the cannabis is cultivated or processed for a minimum of two (2) olfactometer observations not less than 15 minutes apart within a one (1) hour period (seven DT one hour).

Rationale: The project cultivation area is 125 feet from the eastern property line, 320 feet from the western property line, 298 feet from the northern property line and 1,438 feet from the southern property line. An odor study (Exhibit H) was provided demonstrating that the project would not exceed a DT of seven (7) with mitigation measures applied (Condition of Approval No. 25).

3.10 The project is consistent with Section 130.41.200.5.E

Section 130.41.200.5.E requires that commercial cannabis cultivation may only be permitted if sufficient evidence submitted to the County demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; and (2) all required State permits from the State Water Resources Control Board and any other State agency with jurisdiction.

Rationale: The project site contains a well permitted by the El Dorado County Environmental Management Department (EMD). The water source has been reviewed and approved by the State Water Resources Control Board and the California Department of Fish and Wildlife.

3.11 The project is consistent with Section 130.41.200.5.G

Section 130.41.200.5.G requires that cannabis shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Screening shall be accomplished by enclosure within a greenhouse or hoop house or by use of fencing or vegetation.

Rationale: The project proposes outdoor cultivation. The outdoor cultivation will be screened by use of exclusionary fencing with visually excluding slats or shade cloth and existing natural vegetation.

3.12 The project is consistent with Section 130.41.200.5.H

Section 130.41.200.5.H requires areas where cannabis is cultivated, the premises on which cannabis is cultivated, or a portion thereof that includes the cultivation area shall be secured by a minimum six-foot high solid wood or chain link wildlife exclusionary fence, such as cyclone or field game fencing, with locked gates built in compliance with building and zoning codes.

Rationale: The security plan reviewed and approved by the EDSO includes security fencing enclosing all cultivation areas.

3.13 The project is consistent with Section 130.41.200.5.I

Section 130.41.200.5.I requires that electrical power for outdoor or mixed-light cultivation operations, including but not limited to illumination, heating, cooling, water supply, and ventilation, shall be provided by on-grid power with a 100 percent renewable source, on-site zero net energy renewable source, or with the purchase of carbon offsets of any portion of power not from renewable sources.

Rationale: The project site proposes a solar system to be approved by the County that will be the power source for the outdoor cultivation operation.

3.14 The project is consistent with Section 130.41.300.4.G.

Section 130.41.300.4.G requires that no CCUP may be issued until a background check of all owners and the Designated Local Contact is completed with review and recommendation by EDSO, including but not limited to criminal history, fingerprinting, and any pending charges. The applicant shall be responsible for the cost of the background check. The County may deny an application based on the results of a background check if the County determines that information in the background check makes it more likely than not that any amount of funding for the operation will be or was derived from illegal activity or because the criminal history or other information discovered in the background check of an owner or spouse of an owner weighs against the owner's trustworthiness or ability to run a legal business in compliance with all regulations, including but not limited to the risk of involvement or influence by organized crime, prior convictions involving controlled

substances or violent crimes, the likelihood that sales and income will not be truthfully reported, or the risk that cannabis will be illegally provided or sold to individuals under the age of 21.

Rationale: EDSO completed the interim background review and determined that all required persons met the minimum background check requirements and recommended further processing of the application.

3.15 The project is consistent with Section 130.41.100.4.H.

Section 130.41.100.4.H requires that concentration of commercial cannabis activities and proximity to an existing or proposed commercial cannabis activity shall be considered in determining whether to grant a CCUP.

Rationale: The subject project site is approximately 5.75 miles from the closest approved application for commercial cannabis cultivation (CCUP20-0005) and is approximately one (1) mile from the closest proposed application for commercial cannabis cultivation (CCUP22-0002). There would be no anticipated significant land use incompatibilities or significant impacts to public health resulting from the density of proposed and existing commercial cannabis activities.

4.0 CONDITIONAL USE PERMIT FINDINGS

4.1 The issuance of the permit is consistent with the General Plan.

Rationale: The proposed commercial cannabis cultivation and facility use is consistent with the policies and requirements in the General Plan as discussed in the General Plan section of the Staff Report. The proposed use is consistent with all applicable policies as set forth in Finding 2.0 above.

4.2 The proposed use would not be detrimental to the public health, safety and welfare, or injurious to the neighborhood.

Rationale: The proposed use will not significantly conflict with the adjacent uses and the project site. The adjoining properties to the north, east, and west are similarly within the PA zone district. The project is consistent with the development standards within Section 130.41.200 of the Zoning Ordinance - Outdoor Cultivation of Commercial Cannabis. The proposed commercial cannabis cultivation is not anticipated to result in significant environmental impacts to neighboring parcels. Therefore, the project has been located and designed to be compatible with adjoining land uses. The proposed use is not anticipated to create hazards that would be considered detrimental to the public health, safety, and welfare, or injurious to the neighborhood based on the data and conclusions contained in the Staff Report and CEQA Initial

Study. Studies prepared by qualified professionals conclude that odor, noise, and traffic will not exceed County development standards.

4.3 The proposed use is specifically permitted by Conditional Use Permit.

Rationale: As discussed in Section 3.1 above, the proposed use is consistent with the PA-20 zone district as commercial cannabis cultivation and nursery facilities are allowed within the PA-20 zone district with the approval of a CCUP. The project has been analyzed in accordance with Zoning Ordinance Chapter 130.41 (Commercial Cannabis) for applicable development standards.