

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



Agenda of: May 25, 2023

Staff: Evan Mattes, Senior Planner

COMMERCIAL CANNABIS USE PERMIT

FILE NUMBER: CCUP20-0005/Arabian

APPLICANT/AGENT: Robert Arabian

REQUEST: Commercial Cannabis Use Permit for the construction and operation of a cannabis cultivation facility for medical and adult-use recreational cannabis.

LOCATION: South side of Hawkeye Road, approximately 0.5 mile south of the intersection with Happy Valley Road, in the Somerset area, Supervisorial District 2 (Exhibit A).

APN: 041-910-008-000 (Exhibit D)

ACREAGE: 20.18 acres

GENERAL PLAN

LAND USE DESIGNATION: Rural Residential-Platted Lands (RR-PL) (Exhibit F)

ZONING DESIGNATION: Rural Lands, 20-acre Minimum (RL-20) (Exhibit G)

ENVIRONMENTAL DOCUMENT: Mitigated Negative Declaration

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

1. Adopt the Mitigated Negative Declaration (MND) based on the Initial Study prepared by staff;

2. Adopt the Mitigation Monitoring and Reporting Program (MMRP) in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15074(d), incorporated as Conditions of Approval; and
3. Approve Commercial Cannabis Use Permit CCUP20-0005 based on the Findings and subject to the Conditions of Approval as presented.

EXECUTIVE SUMMARY

The project applicant proposes to construct a commercial cannabis cultivation facility. The proposal would include outdoor cultivation, consisting of 11 hoop houses. Chapter 130.41 of the Zoning Ordinance requires approval of a Commercial Cannabis Use Permit (CCUP) for all commercial cannabis uses. The project is proposed on a parcel within the RL-20 zone district (Exhibit G), consistent with the RR-PL 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 PA19-0009 on October 18, 2019. 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 CCUP.

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 who 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 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 non-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 Provisions 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 (1) 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 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 include 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 (BOS) placed five (5) 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 El Dorado County Sheriff's Office (EDSO) 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, EDSO sought to obtain approval from the California Department of Justice and the Federal Bureau of Investigation (FBI) to utilize Live Scan criminal history access for this licensing purpose. EDSO initiated that process in December 2019, however, has experienced significant delays in the approvals due to COVID-19 and changes in the form of resolution the FBI is now requesting for such approvals. Up until February 19, 2021, EDSO 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 (6) 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, EDSO, 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 EDSO receives the approvals necessary to utilize Live Scan.

SITE DESCRIPTION

The project property consists of one (1) 20.18-acre parcel and construction and operation of the cannabis cultivation premises would occupy approximately one (1) acre of the project property, which is hereafter referred to as the "project site". The proposed project would consist of a cannabis cultivation facility that would be situated on gently sloping land and would be located in the northern portion of the property. The project site is accessible via an existing gravel driveway located in the northern portion of the property, south of Hawkeye Road. The property is designated RR-PL in the County's General Plan, and it is within the RL-20 zone district.

The project property is bordered to the north by Hawkeye Road, rural residential properties (single family residence), and sparsely wooded land; to the east, undeveloped, sparsely wooded land; to the south, undeveloped, densely wooded land; and to the west by Stephanie Lane and Guardian

Court, rural residential properties (single family residence), and sparsely wooded land. The project property consists of mountainous terrain with elevations ranging from approximately 3,200 feet in the northern area of the property, to approximately 2,300 feet in the southern area of the property. The project would include two (2) cannabis cultivation areas within the cannabis cultivation premises. The northern cannabis cultivation area is terraced and gently slopes from east to west, while the southern cannabis cultivation area is relatively flat. Drainage within the site generally flows north to southwest, eventually flowing into the North Fork Cosumnes River, south of the project site. A small stream runs north to south on the western and southern edges of the property, approximately 335 feet west of the project site; however, no permanent watercourses exist in the immediate vicinity of the cultivation area. Two (2) existing buildings are located east of the cannabis cultivation premises but would not be used as part of the proposed project.

PROJECT DESCRIPTION

The proposed project would include the cultivation of a total of 9,639 square feet of flowering outdoor cannabis canopy within 11 hoop houses equipped with shade cloth covers, but no supplemental lighting. Cultivation Area #1 would contain four (4) hoop houses with a combined total of 3,725 square feet of flowering canopy, located in the northern portion of the fenced cultivation area, and Cultivation Area #2 would contain seven (7) hoop houses with a combined total of 5,914 square feet of flowering canopy, located in the southern portion of the fenced cultivation area.

Cannabis would be grown within a series of raised beds in rows and would use drip irrigation. The hoop houses would be roughly 7.5 feet tall, and the beds would be 16 inches tall on either side. Cultivation soil beds would be tilled seasonally. The cannabis would be sun grown from seed to maturity on the premises and harvested on-site. The mature plants would be transported to an off-site, third-party licensed manufacturing facility for trimming, packaging, and processing.

In years two (2) to five (5) of project operation, the applicant may convert the existing containers on-site near the parking spaces for drying cannabis biomass and add supplemental lighting to the hoop houses, which is also evaluated in this Initial Study.

STAFF ANALYSIS

Employees

The project owner/applicant and family members would manage day to day operations of the proposed project and would be the sole full-time employees. The project applicant/owner would hire up to six (6) seasonal employees during harvest, as needed. It is anticipated that no more than one (1) employee would be on-site under most circumstances and up to seven (7) employees would be on-site under peak conditions. The hours of operation for the project would be 6:00 a.m. to 10:00 p.m.

Odor

The project consists of outdoor cultivation within 11 hoop houses. 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 L)

was provided demonstrating that the project would not exceed a dilution threshold (DT) of seven (7). The highest reading would be five and ninety-eight hundredths (5.98) DT measured from the eastern property line.

Security Plan

A Security Plan was prepared by the project applicant. 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, surveillance, and alarm systems.

Site Access/Parking

The site can be accessed from the north via a 12-foot wide gravel driveway that leads south from Hawkeye Road to a parking area north of the cannabis cultivation area, and the applicant would use a small tractor with a box scraper to maintain areas with gravel. The cannabis cultivation area would be a short walk to the southwest from the driveway and would be accessed by foot or small off-road vehicles such as all-terrain vehicles (ATVs). A gravel, cul-de-sac turnaround is located at the end of the driveway to facilitate turnarounds as needed, including for emergency vehicles.

Three (3) 10-foot by 22-foot parking spaces would be constructed northeast of the cannabis cultivation area. The parking area would be located halfway between the property entrance and end of the driveway and would be located in between and adjacent to the two (2) existing shipping containers. Two (2) parking spaces would be located north of the existing shipping containers, and one (1) would be located in between the two (2) existing shipping containers.

Lighting

Solar powered security lighting and cameras would be concentrated on select portions of the site, including the entrances of the property and cannabis cultivation area and would be motion activated. The security lighting would be fully shielded and downward facing and would activate only when motion sensors detect movement, to deter and observe any potential intruders. The hours of operation for the proposed project would be from 6:00 a.m. to 10:00 p.m., so the potential for any nighttime light or glare related to project operations would be minimized. The operation would not involve the use of any supplemental lighting for mature plants. In years two (2) to five (5) of project operation, the applicant may convert the existing shipping containers on-site for drying cannabis biomass and would add supplemental lighting to the hoop houses. 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 (DOT), Air Quality Management District (AQMD), Pioneer Fire Protection District, and the County Environmental Management Division (EMD). 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 RR-PL (Exhibit F). As proposed, the project would be consistent with the standards established by the RR 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 RL-20 zone district as commercial cannabis cultivation and nursery facilities are allowed within the RL-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. As proposed, the project would be consistent with the development standards of the RL-20 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 (0.5) mile radius of an incorporated City or County, notice of and an opportunity to comment on the application for the CCUP shall be provided to the applicable City or County before the permit is considered by the Planning Commission. As a CCUP, it would have a notification radius of 1,000 feet from the subject property, with a notice in the local newspaper. The project site is not located within a one-half (0.5) 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 Services 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 MND has been prepared. The public review period for the Draft MND set forth in CEQA for this project is 30 days, and took place beginning March 17, 2023, and ending April 17, 2023. 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. The applicant shall 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

Exhibit A.....	Vicinity Map
Exhibit B.....	Location Map
Exhibit C.....	Aerial Map
Exhibit D.....	Assessor's Parcel Map
Exhibit E.....	Topography Map
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 EDSO Dated December 07, 2022
Exhibit K.....	Security Plan
Exhibit L.....	Odor Study