

May 2, 2024

Steven A. Santos
County of Humboldt Planning and Building Department
3015 H Street,
Eureka CA 95501

RE: Reply to Request Letter
Record No. PLN-12171-CUP, APN: 217-271-002

Dear Mr. Santos,

This letter is submitted in response to the April 9, 2024 letter (erroneously dated February 9, 2024) sent by you requesting information regarding the water source for cannabis cultivation application PLN-12171-CUP. Four numbered requests were made for which corresponding responses are provided below:

1. Although the adjoining landowner has a deeded right to water in the subject pond, that landowner could not legally utilize any of that right without a valid LSA for diversion from an onstream pond and a valid appropriative water right. To the knowledge of this applicant, they have obtained neither. As you are aware, water rights in the State of California are issued on a priority basis (see Cal. Water Code §§ 1450-1455). As a result, the only “practical dilemma regarding the availability of water” is one that exists for the adjoining landowner, should he or she seek to utilize that right hereafter by making an LSAA application themselves. Any such application would then be subject to the allocation previously analyzed by CDFW and granted to Overland Road, LLC in LSAA #EPIMS-HUM-34121-R. The insinuation that the adjoining landowner could, at this time, apply for and receive an appropriative water right and corresponding LSA that allows them to remove “their 50%” of the water *first* to the extent that “Overland Road, LLC potentially does not have a right to access any of the pond water” simply has no basis in fact or reason.

Furthermore, there is no justified cause to believe that any LSA offered to the adjoining landowner would not also require the same, if not more restrictive forbearance requirements as those granted to this applicant. If such an LSA were issued, the available portion of the water (the first 50%) would be allocated as the Waterboard saw fit, but in no case could the adjoining landowner obtain more than 50% of the *available* portion (roughly 250,000 gallons), with this applicant maintaining the remaining 50% of the *available* portion (roughly 250,000 gallons). In this hypothetical, the adjoining landowner’s ability to draw from this source would be limited by (1) CDFW habitat forbearance restrictions (i.e. the 50% cutoff) and (2) any superior rights from the same source (i.e. this applicant’s beneficial use). This applicant anticipates an annual irrigation use of 160,000 gallons, theoretically leaving 340,000 gallons available for the adjoining landowner, minus evaporation.

Should the available portion of the pond prove insufficient to fulfil the irrigation needs of this applicant in any given year, with or without adjoining landowner use as a contributing factor, this applicant would be left in the identical situation as any permitted Humboldt County cannabis cultivator who suffers insufficient water due to: insufficient rainfall inputs to a rain catchment system; insufficient diversion season streamflow to allow diversion under an SIUR; well running dry; inadvertent discharge from storage; temperature related increase in irrigation demand; etc.

Finally, the adjoining landowner is not and cannot be a party to this applicant's LSA, which is an agreement between the California Department of Fish and Wildlife and a "Permittee" as defined in Cal. CA Fish & Game Code § 1601 as a singular "person". The rigid notification procedure necessary to obtain an LSA agreement does not allow for multiple signatories even within a single business to execute an agreement, much less representatives from separate, unaffiliated parties. Even if a multi-entity LSA were possible, Cal. Code Regs. Tit. 14 § 722(l), which specifies that a "Permittee shall be solely liable for any violations", would make such an agreement impractical. A requirement by your department that this applicant's business accept liability for an unrelated third party's noncompliance of a mutual agreement with CDFW is unprecedented and unreasonable.

2. Please see the attached SIUR Application Information document prepared by Green Road Consulting which includes a description of the pond to the satisfaction of the State Waterboard Division of Water Rights.

3. On any given day between April 1 and October 31, any measurable dry-season increase in the pond volume, as measured by depth gauge, will be pumped into the overflow culvert using the same solar water pump as is used for transporting water from the pond to the irrigation flat, until the gauge depth returns to that of the previous day.

This method was not only suggested by the Division of Water Rights, but a determination of whether bypass is even necessary by that department and CDFW is purposefully postponed specifically "so that diverters can get their water right and satisfy the county/DCC in the meantime." Please see attached correspondence from the Division of Water Rights, Registrations Unit.

4. The 19,200 gallons of water anticipated for irrigation use in March (6,400 gallons) and November (12,800 gallons) will be supplied from the existing and proposed hard tank storage specified for irrigation use, totaling 30,000 gallons, which will be filled during the operative period of the SIUR between April and October.

Sincerely,
Steve Breitenstein
Overland Road, LLC



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT

3015 H Street Eureka CA 95501
Fax: (707) 268-3792 Phone: (707) 445-7541

Sent via Email

February 9, 2024

Overland Road, LLC
1650 Central Ave Suite C
McKinleyville, CA 95519

RE: Record No. PLN-12171-CUP, APN: 217-271-002

Dear Overland Road LLC,

This letter follows our April 2, 2024 meeting and further review of the above referenced project. This letter also provides notice that the project will be rescheduled from May 2, 2024 to the June 6, 2024 Planning Commission meeting to allow more time to evaluate the water source for the project as described herein.

Water Source

The water source for this project is identified as an onstream pond. Per consultation with the State Water Board, transfer of irrigation water from the pond is limited to the period of April 1 to October 31. Irrigation water may not be transferred from the pond between November 1 and March 31. Additionally, all inflow must bypass downstream during the forbearance period.

Per the terms of the Lake or Streambed Alteration Agreement (LSAA) (EPIMS-HUM-34121-R1), section 2.21, between April 1 and September 1, water transfer from the pond must cease once the pond volume is one half of the maximum pond volume.

Per the legal description of Parcel Four in the grant deed (2022-003245), Overland Road, LLC is entitled to take only 50% of the water from the pond.

When the terms and conditions of these three documents are reconciled, it creates a practical dilemma regarding the availability of water. Specifically, if Overland Road, LLC only has rights to 50% of the pond volume and has agreed to maintain at least 50% of the pond volume through the LSAA, then Overland Road, LLC potentially does not have a right to access any of the pond water during most of the growing season during the period which the Water Board allows water transfers from the pond.

As soon as possible but **no later than May 3, 2024**, please provide the following:

1. Documentation demonstrating that the adjoining landowner that also has rights to the pond is a party to or subject to the LSAA. Alternatively, provide documentation demonstrating that Overland Road, LLC has rights to more than 50% of the pond volume.
2. Any studies or evaluation including methodology prepared by a qualified professional determining the total maximum volume of the pond.
3. A detailed and complete description of how inflow bypass between April 1 and October 31 will be accomplished.
4. The documentation provided by Overland Road, LLC to the State Water Board indicates that irrigation will only occur during the forbearance period. However, the project Operation Plan provided to the County of Humboldt indicates that irrigation will also occur in March and November. Please provide a detailed and complete explanation of how irrigation water will be provided by the pond in March and November when transfers from the pond are restricted to April through October. Alternatively, the irrigation schedule in the Operations Plan can be updated.

For questions about this letter, I can be reached at sasantos@co.humboldt.ca.us or (707) 268-3749.

Sincerely,



Steven A. Santos
Senior Planner

Ec: breitenstein.steven@gmail.com
Tyrobincollins@gmail.com

Enc: LSAA
Grant Deed