



# COUNTY OF HUMBOLDT

For the meeting of: 8/30/2022

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File #: 22-1109

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**To:** The Humboldt County Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Public Hearing

**SUBJECT:**

An Appeal of the Planning Commission's Approval of a Conditional Use Permit for 18,492 Square Feet of Existing Outdoor Commercial Cannabis Cultivation, the Appeal Relates Specifically to the Addition of Conditional of Approval A6 Requiring 20% Rainwater Catchment within 2 Years

**RECOMMENDATION:**

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by appellant, and testimony from the public; and
2. Close the public hearing; and
3. Adopt the resolution (Resolution 22-\_\_). (Attachment 1) which does the following:
  - a. Finding the Board of Supervisors have considered the Addendum to the Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance that was prepared for the MHG, LLC project); and
  - b. Finding the proposed project complies with the General Plan and Zoning Ordinance; and
  - c. Sustain the Appeal submitted by MHG LLC; and
  - d. Approving the Conditional Use Permit subject to the recommended conditions of approval.
4. Direct the Clerk of the Board to give notice of the decision to the Appellant, the Planning and Building Department, and any other interested party.

**SOURCE OF FUNDING:**

The Appellant has paid the fee associated with filing this appeal. (1100268-608420)

**DISCUSSION:**

**Executive Summary**

This is an appeal of the Humboldt County Planning Commission's July 7, 2022 approval of the MHG, LLC Conditional Use Permit by a 5-1 majority vote. MHG, LLC (Appellant), is appealing the addition of condition of approval A6 which requires implementation of rainwater catchment for up to 20% of the total annual irrigation water use. For this project, this condition would require 44,600 gallons of

irrigation water come from rainwater catchment annually. Appellant is requesting that condition of approval A6 be removed from the permit stating in their appeal application "...it appears new policy, not currently codified by the General Plan and/or CMMLUO, was formulated on the fly during (the) Public Hearing."

The Planning and Building Department is recommending the Board of Supervisors sustain the appeal and approve the Conditional Use Permit as staff recommended and remove condition of approval A6 because mitigation of the concerns raised by the Planning Commission were already addressed in the adoption of the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) mitigation and monitoring program.

This is a *de novo* hearing and the Board of Supervisors is not limited to the evidence in the existing record and may receive new evidence at the appeal hearing.

#### Project Information

The project is a Conditional Use Permit (PLN-10930-CUP) for 18,492 square feet of existing outdoor commercial cannabis cultivation using light deprivation supported by an 1,800 square foot ancillary nursery. Irrigation water is estimated at 223,000 gallons annually and sourced by a permitted well that is likely disconnected from surface waters according to a licensed professional geologist. Total water storage for the project is 40,000 gallons. Power is supplied by a generator and the operation will have up to five staff at peak operation. The project is recommended to be conditioned such that the applicant will develop an alternative renewable energy source fully implemented by Jan. 1, 2026. The proposed project includes onsite processing. The cultivation is being relocated and the previous area will be restored.

During the deliberations by the Planning Commission on July 7, 2022, some commissioners expressed concerns regarding drought and climate change. The commission discussed that there needed to be a new policy developed to require rainwater catchment, but in the until such a requirement is formalized a condition needed to be applied to require rainwater catchment.

#### Appeal

The Appellant, MHG, LLC, which is also the applicant, is requesting that condition of approval A6 be removed from the permit stating in their appeal application "...it appears new policy, not currently codified by the General Plan and/or CMMLUO, was formulated on the fly during (the) Public Hearing."

#### Staff Response

The concerns raised by the Planning Commission were addressed in the adoption of the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) mitigation and monitoring program. Additionally, the CMMLUO does not require applicants to use a particular water source or combination of water sources.

The text of condition of approval A6 is:

*“Within one year of project approval the applicant shall provide a plan for review and approval by the Planning and Building Department to implement a rainwater catchment system capable of providing 20% of the total water required for cultivation. Within two years of project approval the rainwater catchment system must be operational, and provide at least 20% of the irrigation water.”*

To justify the condition of approval A6, the Commission made finding 6(f) in the adopted resolution:

*“It is necessary to have a combination of water sources in light of the historic drought and climate change, so a condition has been added to require rainwater catchment for at least 20% of the irrigation water to protect public health safety and welfare.”*

The concerns described in finding 6(f) for the Conditional Use Permit were already addressed in the mitigation and monitoring program associated with the Mitigated Negative Declaration and the adoption of the Commercial Medical Marijuana Land Use Ordinance (CMMLUO). Specifically, resolution 16-14 adopted by the Board of Supervisors on Jan. 26, 2016, finding that the CMMLUO is consistent with the General Plan and adopting the mitigated negative declaration with substitute mitigation measures and a mitigation monitoring program includes the following provision:

**“Reserved Right to Restrict Cultivation Activities** - All clearances and permits require that the recipient acknowledge the County’s right to place limits on cultivation should unforeseen environmental conditions develop throughout a watershed (such as low surface water flows or sustained drought). This allows the county opportunity to conduct contemporaneous response to changing environmental conditions prompting widespread concern.”

The reserved right to restrict cultivation activities in response to contemporaneous environmental conditions is also codified in the CMMLUO in section 314-55.3.10(m):

*“Acknowledge that the County reserves the right to reduce the size of the area allowed for cultivation under any clearance or permit issued in accordance with this Section in the event that environmental conditions, such as a sustained drought or low flows in the watershed will not support diversions for irrigation.”*

This programmatic mitigation measure is further implemented by all cannabis permit applicants signing an acknowledgement form as part of the application process. The acknowledgement form provides direct notice to applicants regarding this and other mitigation and monitoring measures.

It is appropriate to add conditions and modify a permit in response to information on the record that reveals a circumstance that needs to be addressed. In this case, the record shows that the applicant’s water source was adequate and would not have any negative environmental consequences. The condition was added because the commission believes it is good policy to require some of the irrigation water be from rainwater catchment. While this may be true, if conditions are added without circumstances that need to be address in the specific case it can appear to be arbitrary policy

development. In adopting this condition, the Planning Commission referenced no specific facts regarding the project or project site that would necessitate the additional water source.

The cannabis permitting program does provide various performance standards for water. For example, the CMMLUO requires forbearance and storage for surface water diversions and its successor, the Commercial Cannabis Land Use Ordinance (CCLUO) prohibits water diversions or new cultivation in impacted watersheds. However, the cannabis permitting program does not dictate that an operation uses a specific source or combination of sources for irrigation water. While staff agrees that it may be prudent to have multiple water sources, the decision whether to implement such an approach is an economic investment and risk-based decision reserved to the applicant. Absent the identification of specific contemporaneous environmental condition affecting this specific project in this location, the imposition of conditional of approval A6 by the Planning Commission may have been imposed without necessary supporting evidence and findings.

FINANCIAL IMPACT:

The Appellant has paid the fee associated with filing this appeal. (1100268-608420)  
There will be no additional effect on the General Fund.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework through its core roles to enforce laws and regulations to protect residents and encourage new local enterprise.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose to deny the appeal and approve the project as revised by the Planning Commission on July 7, 2022. The Board could also choose to revise or add other conditions of approval. The Board could also choose to deny the Conditional Use Permit.

ATTACHMENTS:

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

1. Draft Board Resolution and Findings for Record No. PLN-2022-17852
  - a. Exhibit B - Cultivation Operation Plan
  - b. Exhibit C - Site Plan
2. Grounds for Appeal filed by MHG LLC
3. Planning Commission Staff Report
4. Resolution of the Planning Commission, Resolution No. 22-081
5. Public Comments provided to the Planning Commission

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

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