

Recommended Commission Action

1. Describe the application as a public hearing;
2. Request that staff present the project;
3. Open the public hearing and receive testimony; and
4. Close the hearing and adopt the Resolution to take the following actions:

Find that the Commission has considered the Addendum to the adopted Mitigated Negative Declaration for the Commercial Medical marijuana Land Use Ordinance (CMMLUO) as described by Section 15164 of the State CEQA Guidelines, make the required findings for approval of the Conditional Use Permit and approve the Humboldt Kingz, LLC Conditional Use Permit as recommended by staff and subject to the recommended conditions.

Executive Summary: Humboldt Kingz, LLC seeks a Conditional Use Permit to allow the continued operation of 37,250 square feet of outdoor cannabis cultivation in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, Commercial Medical Marijuana Land Use Ordinance (CMMLUO). The site is designated as Agricultural Grazing (AG) in the Humboldt County 2017 General Plan Update and zoned Agriculture Exclusive (AE) and Timberland Production Zone (TPZ) with Special Building Site B-5(160). The project also involves a Special Permit for proposed work within the Streamside Management Area (SMA). Outdoor cannabis cultivation will occur in light deprivation greenhouses and full sun. There will be maximum of two cultivation cycles occurring annually. Propagation is proposed within a proposed 3,700-square-foot greenhouse. Artificial lighting used for mixed light cultivation, ancillary propagation, and processing will adhere to shielding and International Dark Sky Association standards as set forth in the CMMLUO. Processing such as drying and curing is proposed onsite within an existing 1,440-square-foot dry shed. Further processing such as trimming is proposed offsite at a licensed processing facility. The applicant anticipates two (2) full-time employees, and six (6) seasonal employees will be required for operations annually. The Department of Environmental Health commented seasonal cultivation without processing may use portable toilets to serve the operation. Permittee shall provide portable toilet(s) to cultivation areas, meeting appropriate setbacks per Humboldt County Code, or install a permitted onsite wastewater treatment system associated with a permitted structure. Power for the project will be provided by solar with a backup generator. The generator will be stored in a shed and kept in secondary containment. Noise levels shall not exceed no more than 60 decibels at the property line. The Department of Environmental Health commented seasonal cultivation without processing may use portable toilets to serve the operation. Permittee shall provide portable toilet(s) to cultivation areas, meeting appropriate setbacks per Humboldt County Code, or install a permitted onsite wastewater treatment system associated with a permitted structure.

Water Resources

Water for irrigation will be provided by a 6-million-gallon on-stream pond and rainwater catchment utilizing the rooftops of the existing structures. There are approximately 10,492 square feet of surface area where rainwater will be harvested. The average rainfall for the Garberville, CA area is 67 inches per year. The amount of expected annual precipitation and available surface area would yield approximately 394,152 gallons of water input to storage.

The applicant anticipates 600,000 gallons of water will be required annually for irrigation. Water storage onsite totals 6,014,000 gallons whereas 6 million gallons is from a 6-million-gallon onstream pond, and 14,000 gallons is sourced from hard tanks. The applicant submitted an Initial Statement of Water Diversion and Use for the use of the 6-million-gallon onstream pond for cannabis irrigation.

The applicant is working with CDFW and the State Water Board to register the pond as an onstream reservoir to be utilized for water storage.

The applicant also has a permitted groundwater well onsite, and in the event that the pond cannot be utilized as an onstream reservoir, the applicant is conditioned to utilize rainwater catchment and the groundwater well for cannabis cultivation.

Biological Resources

According to the California Natural Diversity Database (CNDDDB), the foothill yellow-legged frog is the only specie of concern mapped on the parcel. The nearest Northern Spotted Owl (NSO) activity center (HUM0223) is located approximately 2.82-miles southeast from the project site and the nearest mapped NSO observation is located approximately 2.43-miles southeast. Marbled murrelet habitat is mapped approximately 2.47-miles southeast from the project site. Staff does not believe the project will have a direct or indirect impact on any endangered or threatened species of concern because the cultivation is existing and the project proposes restoration activities that will result in habitat enhancement. Power for the project will be sourced from solar with a backup generator that will be contained and the combined decibel level for all noise sources, including generators, measured at the property line shall be no more than 60 decibels.

The applicant submitted a *Botanical Survey Report* prepared by Hohman & Associates Forestry Consultants dated October 16, 2019. The survey concluded there were no protected rare or endangered plants identified within the proposed disturbance areas or elsewhere on the Journey Aquarian property. The area consists of grasslands, oak woodlands, and Douglas fir forest. The survey also identified wetlands, including an artificial pond.

The applicant submitted a *Wetland Restoration Plan* prepared by James Regan (Botanist/Wetland Delineator) dated August 2019. According to the survey, an approximate 40-acre area surrounding the pond was surveyed to map the watercourses that could affect the pond and would have been part of the historic hydrologic system. The survey states all mapped watercourses in the subject areas showed at least two of the three primary indicators of Ordinary High Water Mark (OHWM), which include a break in slope, a change in sediment profile, or a change in sediment from fines and organics outside the OHWM and loose gravels and small cobble within (some larger rocks were present when creeks were down-cut or deeply incised). The assessment of historic wetlands and waters impacted by the pond creation was conducted by interpretation of historic aerial imagery and assessment of images in contrast with the current hydrologic regime (wetland and watercourse locations). The results of the assessment concluded 12,454 square feet of wetlands were impacted due to the construction of the pond. The proposed restoration activities will take place in two areas: Restoration Area 1 and Restoration Area 2. Restoration Area 1 is currently composed of a portion of the current pond, access road, and the portions of the area outside of the access road, that are not currently classified as wetland areas. The area covers approximately 18,140 square feet and partially overlays the historic wetland areas. Restoration Area 2 is currently composed of a mix of native and non-native range grasses with small perennial watercourse running down the length. Restoration Area 2 is approximately 6,770 square feet and will extend on both sides of the watercourse between two existing wetland areas. The proposed restoration activities within Restoration Area 1 include altering the current pond outlet to reduce the size of the pond. This action will expose a portion of the ponded area (approximately 10,000 square feet). The road that makes up the current bank of the pond shall be decommissioned and spoils either incorporated into the wetland design or moved offsite. Restoration Area 1 shall also be shaped and graded necessary and potentially ripped and prepped for planting. The final site shape will be shallowly concaved and will allow for water inputs to be retained before moving on to fill the new pond. The site will be planted with a mix of appropriate native plants suited for wetland habitats in the region. The proposed restoration areas within Restoration Area 2 will include the grading off of current grassland vegetation, shaping the site to a shallow concave topography while allowing the current stream channel to persist, and planting the area with a mix appropriate native plants suited for wetland habitats in the region. The area may be ripped to facilitate planting. Additionally, the restoration plan states there are

additional areas planned for restoration planting include the confluences of mapped creeks entering Restoration Area 1 and the berm along the northern and western boundaries of the site. Within this area the applicant will be planting willow (*Salix sp.*), Oregon ash (*Fraxinus latifolia*), and California bay laurel (*Umbellularia californica*) may be planted in strategic locations to provide bank stability, aid in erosion control, and provide additional habitat structure and diversity. The applicant submitted a finalized Streambed Alteration Agreement (Notification no. 1600-2018-0422-R1) for the proposed instream activities. The project is conditioned for the applicant to adhere and implement all recommendations found within the Wetland Restoration Plan.

Access

The project is located in the New Harris area. The property is accessed via private driveway from Harris Road. The applicant submitted a Road Evaluation prepared by NorthPoint Consulting Group dated December 7, 2018. The first 2.1 miles of Harris Road was evaluated, leading off from Bell Springs Road, which is a paved County maintained road. The current average daily traffic (ADT) of the 2.1-mile section of Harris Road is estimated to be 64 vehicles. The evaluation concludes Harris Road complies with all SRA Fire Safe Regulations including roadway surfaces and appropriate turnouts provided no further than 1,320 feet apart. The Road Evaluation did not provide any recommendations.

Cannabis Restoration Plan

The applicant submitted a Restoration Plan prepared by NorthPoint Consulting Group, Inc. dated September 2018. According to the Restoration Plan, there are seven (7) cultivation sites identified as "Area's A-G" located on the parcel, however there are four areas (C, E, F, and G) that need to be altered or removed entirely to comply with riparian setbacks. Lastly, Area A needs to be altered due to the proximity to the property line. Area A historically had approximately 7,000 square feet of outdoor cannabis cultivation and light deprivation cultivation in a 30'x50' greenhouse. The plan proposes to relocate the 30'x50' greenhouse to Area H or I due to the proximity to the property boundary. Area C historically had approximately 6,000-square-feet of outdoor cannabis cultivation. The plan proposes to reduce the 6,000-square-feet to 2,700-square-feet to comply with a 50 foot riparian buffer off a Class III watercourse near the north side of the cultivation area. Area E historically had approximately 2,800 square feet of outdoor cultivation but is located within a riparian setback from a Class III watercourse. All cultivation-related equipment will be completely removed from this area and the area will be restored with natural vegetation. The applicant is proposing to relocate a total of 12,000 square feet of cannabis cultivation to two environmentally superior areas: Area H and Area I. According to the relocation justification, cultivation Area H is located 200 feet from the nearest watercourse (Class II drainage) and cultivation Area I is located over 100 feet from the nearest watercourse (Class II drainage). Both sites are also located on slopes of less than 10%.

Tribal Consultation

The project is located in the Bear River Band Rancheria Aboriginal Ancestral Territory. The project was referred to the Northwest Information Center and the Bear River Band. The applicant submitted a Cultural Resource Study prepared by William Rich and Associates dated February 2020. As a result of the field survey, two Native American archaeological sites and an isolated artifact were identified. According to the investigation WRA-01 Aquarian Site 1 is located adjacent to the existing cultivation area "Area C" in the south-central part of APN 216-136-004. The roadway within the site should not be graded further and the imported road base should be maintained to avoid erosion of underlying strata. At this location, the direct cultivation area contains a three-foot-deep grade in the hillslope on the north edge of the garden, west of the archaeological site, no artifacts were found within the cultivation area. The road shall not be widened, expanded or otherwise changed within the archeological site boundary. The project has an ongoing condition to include inadvertent archaeological discovery language. Area F historically had approximately 7,500 square feet of cultivation. The area is located entirely within the 100-foot setback from a Class II watercourse and 50 feet from a Class III drainage. All cultivation-related equipment will be

completely removed from this area and the area will be restored with natural vegetation. Area G historically had approximately 11,660 square feet of cannabis cultivation and will be reduced to approximately 8,650 square feet of cultivation, whereas 6,400 square feet will be cultivated utilizing light deprivation techniques. Cannabis is being reduced due to the proximity of a Class III drainage.

Environmental review for this project was conducted and based on the results of that analysis, staff finds that all aspects of the project have been considered in a previously adopted Mitigated Negative Declaration that was adopted for the Commercial Medical Marijuana Land Use Ordinance and has prepared an addendum to this document for consideration by the Planning Commission (See Attachment 2 for more information).

RECOMMENDATION: Based on a review of Planning Division reference sources and comments from all involved referral agencies, Planning staff believes that the applicant has submitted evidence in support of making all of the required findings for approval of the Conditional Use Permit (CUP).

ALTERNATIVES: The Planning Commission could elect not to approve the project, or to require the applicant to submit further evidence, or modify the project. If modifications may cause potentially significant impacts, additional CEQA analysis and findings may be required. These alternatives could be implemented if the Commission is unable to make all of the required findings. Planning staff has stated that the required findings in support of the proposal have been made. Consequently, Planning staff does not recommend further consideration of any alternative.

The Planning Commission could also decide the project may have environmental impacts that would require further environmental review pursuant to CEQA. Staff did not identify any potential impacts. As the lead agency, the Department has determined that the project is consistent with the MND for the CMMLUO as stated above. However, the Commission may reach a different conclusion. In that case, the Commission should continue the item to a future date at least two months later to give staff the time to complete further environmental review.