

**CEQA ADDENDUM TO THE MITIGATED NEGATIVE DECLARATION  
FOR THE COMMERCIAL MEDICINAL MARIJUANA LAND USE ORDINANCE**

**Commercial Medical Marijuana Land Use Ordinance Mitigated Negative Declaration  
(State Clearinghouse # 2015102005), January 2016**

**APN 107-236-013; Honeydew Area, County of Humboldt**

**Prepared By  
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**June 2023**

## **Background**

### **Modified Project Description and Project History –**

The Commercial Medical Marijuana Land Use Ordinance (CMMLUO) established specific regulations for commercial cannabis operations in Humboldt County. These regulations were developed in concert with the Mitigated Negative Declaration (MND) that was adopted for the ordinance to implement the mitigation measures of the MND. The MND addressed the broad environmental impacts that could be expected to occur from the adoption and implementation of the ordinance. The MND specified that the regulations established in the CMMLUO would mitigate the impacts of existing cannabis operations by establishing regulations for an existing unregulated land use to help prevent and reduce environmental impacts that are known to result from unpermitted baseline cultivation operations. Commercial cannabis cultivation in existence as of December 31, 2015, was included in the environmental baseline for the MND and the MND states that “Bringing existing operations into compliance will help to attenuate potential environmental effects from existing cultivation activities, including aesthetic impacts resulting from improper operation or poor siting.” The current project was contemplated by the MND and compliance with the provisions of the CMMLUO will fully mitigate all environmental impacts of the project to a less than significant level.

Kings Peak, LLC seeks a Zoning Clearance Certificate for 3,000 square feet of Outdoor cannabis cultivation in existence prior to Jan. 1, 2016. The application includes a Special permit for work within a Streamside Management Area (SMA) for the continued use and maintenance of a Point of Diversion (POD) from surface water, which is also used for irrigating cannabis. Existing water storage totals 6,300-gallons, and project conditions require an additional 15,000-gal. to allow for forbearance during the summer months. Annual irrigation budget is approximately 19,000-gal. Drying and curing will occur onsite in structure labeled octagon using no power and natural heat, or will occur offsite at a licensed facility. Alternative harvesting and processing techniques may also be used, such as fresh-frozen harvest, harvesting for concentrates, or all processing off site including drying and curing. Power use is very limited, as the POD is gravity fed and drying/curing utilize natural heat. No employees are proposed for the operation, all cultivation and related activities will be conducted by the applicant. No Onsite Wastewater Treatment System (OWTS) exists onsite, so portable toilet and handwashing station will be onsite during operations, and applicant will provide service receipts at each annual inspection to ensure compliance with this permit term is satisfied and ongoing.

A Site Management Plan (SMP) was prepared in fulfillment of State Water Resources Control Board (SWRCB) General Order WQ 2019-0001-DWQ. The project is historically enrolled with the North Coast Regional Water Quality Control Board (NCRWQCB) for reporting of Tier 1 discharges (WDID No. 1\_12CC417746). The SMP was prepared by Cenci Consulting to address the subject parcel (APN 107-236-013).

A Lake or Streambed Alteration Agreement (LSAA) has been filed with the California department of Fish and Wildlife (CDFW) to address the proposed use of a Point of Diversion from surface waters for irrigating commercial cannabis, upgrading one stream crossing, and removal of dirt fill

and debris from the Class III watercourse (Notification No. 1600-2019-0391-R1). Maintaining compliance with the issued LSAA is a term of project approval.

A review of the California Natural Diversity Database (CNDDDB) was conducted and found the project site was approximately 0.5 miles away from mapped marbled murrelet (*Brachyramphus marmoratus*) habitat on state managed lands. Additionally, the project site lies approximately 0.6 miles north from Westlund Creek, which provides habitat for the winter run of the steelhead trout (*Oncorhynchus mykiss irideus*). Nearest Northern Spotted Owl sighting is approximately 1.0 mile east-southeast of the project site, with the closest activity center approximately 1.6 miles southeast. Project conditions will require verification from Planning Division staff before the use of any generators used for emergency backup and time of limited insolation. Verification by County staff the project complies with these requirements will be required before the use of any generators is allowed. Propagation occurs using seeds sowed directly in ground, so artificial lighting is not proposed. Based on the small size of the pre-existing project, coupled with power provided by PG&E and no artificial lighting, the project has a low likelihood of having any effect on nearby sensitive receptors.

Project was referred to the Northwest Information Center (NWIC), which indicated a previous Archaeological Survey covered a portion of the project site. Bear River Band was also referred and indicated inadvertent discovery protocol be applied to the project for any ground disturbing activities.

The modified project is consistent with the adopted MND for the CMMLUO because it complies with all standards of the CMMLUO which were intended to mitigate impacts of existing cultivation.

**Purpose** - Section 15164 of the California Environmental Quality Act (CEQA) provides that the lead agency shall prepare an addendum to a previously certified Mitigated Negative Declaration (MND) if some changes or additions are necessary but none of the conditions described in Section 15162 calling for a subsequent EIR or Negative Declaration have occurred. Section 15162 states that when an EIR has been certified for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous MND was certified as complete, shows any of the following: A) the project will have one or more significant

effects not discussed in the previous MND; B) significant effect previously examined will be substantially more severe than shown in the previous MND; C) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or D) mitigation measures or alternatives which are considerably different from those analyzed in the previous MND would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

## **Summary of Significant Project Effects and Mitigation Recommended**

A review of Appendix G impacts:

**Aesthetics:** The project is limited to outdoor cultivation in a consolidated location near the existing residence. The project will not significantly impact scenic vistas or public views as the parcel is privately owned and does not provide any public access to public lands. The project is consistent with the visual character of the area, which is agricultural and timber production. The project will not create a source of light or glare. No impact.

**Agriculture and Forestry Resources:** The project will utilize agricultural production lands for agricultural purposes as contemplated in the MND. The project will not convert prime farmland or conflict with existing zoning for timber production or any proposed Williamson Act contract. The project will not result in the loss of forest land or conversion of forest land to non-forest use. No impact.

**Air Quality:** The cultivation site and ancillary activity is already developed, so development is minimal and already complete. The project will not expose sensitive receptors to pollutants or create objectionable odors affecting a substantial number of people. The project site is served by Pacific Gas & Electric for power. The project would not result in significant sources of greenhouse gas emissions, as generator use is limited to emergency power outage events. The parcel is approximately 40-acres, so odors from cultivation activities are unlikely to affect neighboring residents. No impact.

**Biological Resources:** The project is in the Honeydew area west of Westlund Creek. The surrounding land is privately owned and is largely forested and/or zoned for agriculture. The project site is a previously disturbed area consisting of open graded flats surrounded by forest and timber. A review of the California Natural Diversity Database (CNDDDB) was conducted and found the project site was approximately 0.5 miles away from mapped marbled murrelet (*Brachyramphus marmoratus*) habitat on state managed lands. Additionally, the project site lies approximately 0.6 miles north from Westlund Creek, which provides habitat for the winter run of the steelhead trout (*Oncorhynchus mykiss irideus*). Nearest Northern Spotted Owl sighting is approximately 1.0 mile east-southeast of the project site, with the closest activity center approximately 1.6 miles southeast. Project conditions will require verification from Planning Division staff before the use of any generators used for emergency backup and time of limited insolation. Verification by County staff the project complies with these requirements will be required before the use of any generators is allowed. Propagation occurs using seeds sowed directly in ground, so artificial lighting is not

proposed. Based on the small size of the pre-existing project, coupled with power provided by PG&E and no artificial lighting, the project has low likelihood of having any effect on nearby sensitive receptors. Less than significant impact.

**Cultural Resources:** Project was referred to the Northwest Information Center (NWIC), which indicated a previous Archaeological Survey covered a portion of the project site. Bear River Band was also referred and indicated inadvertent discovery protocol be applied to the project for any ground disturbing activities. Less than significant impact.

**Energy:** The project is for outdoor cannabis cultivation with offsite drying and processing, and power is provided by Pacific Gas & Electric. Generator use is limited to emergency power outage events and is further limited to attenuate noise. No impact.

**Geology and Soils:** No new structures are proposed that would expose people to risk of life from earthquakes. The project occurs on flat land that has historically been used for agriculture and timber operations. No significant grading will occur. No impact.

**Greenhouse Gas Emissions:** Cultivation is proposed as outdoor, utilizing no artificial lighting. Power is provided by Pacific Gas & Electric, with use of generator limited to times of emergency power outage events. No impact.

**Hazards and Hazardous Materials:** The project will store fertilizers, herbicides and fuel for use in farm equipment in existing storage structures. All hazardous materials are stored in a locked area with secondary containment in accordance with applicable regulations. The project does not expose the public to hazards. The project is in a rural area rated as a high fire severity area, however no significant wood framed structures will be constructed as part of this project. The project would not impair emergency response or create a significant risk from wildfire. Less than significant impact.

**Hydrology and Water Quality:** The project is for a total of 3,000 square feet of outdoor cannabis cultivation in an existing flat, encompassed by timber and agricultural lands. Irrigation water is sourced from a Point of Diversion from surface waters and stored in 6,300-gal. of tanks. An additional 15,000-gal. of tanks will be required to ensure the applicant has sufficient water to irrigate cannabis during the summer forbearance period. The project includes a Special Permit for work within a Streamside Management Area (SMA) to remove dirt fill and debris from the watercourse. In addition to the Special Permit for work within the SMA, the applicant has obtained a Lake and Streambed Alteration Agreement (LSAA) from CDFW and developed a Site Management Plan (SMP) to demonstrate compliance with the State Water Resources Control Board (SWRCB) General Order. Applicant is required to adhere to the recommendations within the (SMP) required by the state waterboard and LSAA from California Department of Fish & Wildlife (CDFW) as they pertain to winterizing the site to prevent erosion, sedimentation, and nutrient runoff. As conditioned, the project will not degrade any water sources or contribute to sedimentation. No impact.

**Land Use and Planning:** The project proposes an agricultural activity on a parcel zoned for agriculture. The project will not physically divide an established community or result in a conflict

with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. No impact.

**Mineral Resources:** No mining is proposed. The project will not result in the loss of availability of a known mineral resources that would be of value to the region and the residents of the state. The project will not result in the loss of availability of a locally important mineral resource recover site. No impact.

**Noise:** The project is located in actively managed agricultural lands. The area has been in agricultural production for more than 10 years. Noise sources from the operation will include construction and dismantling of temporary hoop houses, which would create minimal noise. The temporary noise impacts from these activities would not create a substantial increase in noise levels. There is no reason to believe the noise source will be increased substantially onsite. The project will not result in the generation of excessive ground borne vibration or noise levels. No impact.

**Population and Housing:** The project is for outdoor cannabis cultivation. No housing is proposed nor is any removal of housing proposed. The project will not induce substantial unplanned population growth in an area nor displace substantial numbers of existing people or housing necessitating the construction of replacement housing. No impact.

**Public Services:** The project is for 3,000 square feet of cannabis cultivation on a site where agriculture is the historical dominant use. The project will not increase the need for fire or law enforcement services. The project is not within 600 feet of a park or a school. No impact.

**Recreation:** The project site is private property and contains no recreational facilities nor are recreational facilities accessed through the property. No impact.

**Transportation:** The project will be carried out by the listed applicant, utilizing no employees. The site is accessed by a private driveway off of Panther Gap Road, which has been analyzed to meet or exceed Category 4 roadway, or equivalent standards. The project site will have adequate emergency access. Less than significant impact.

**Utilities and Service Systems:** Solid waste is stored in a manner to prevent access by wildlife and prevents discharge to any surface waters. Solid waste is to be disposed of at an authorized municipal waste transfer station 1 to 3 times per week via personal vehicle. Water for cultivation is sourced from an onsite Point of Diversion from surface water, and existing tank storage. Water diversion for cannabis is limited to a timeframe between December 15 and May 15 annually, and is limited to 0.07 acre-feet (22,809.6-gallons) annually. Less than significant impact.

**Wildfire:** The project will not interfere with any evacuation plan. There will be no significant new structures that will increase the risk of wildfire other than the cultivation hoops which will comply with all building and fire codes pertaining to Agricultural Exempt structures. Less than significant impact.

No changes are proposed for the original MND recommended mitigations. The proposal to

authorize the continued operation of an existing cannabis cultivation site consisting of 6,300 square feet of cultivation with ancillary propagation and processing activities is fully consistent with the impacts identified and adequately mitigated in the original MND. The project as conditioned to implement responsible agency recommendations, results in no significantly adverse environmental effects beyond those identified in the MND. Compliance with the CMMLUO ensures consistency with the adopted MND and provides for mitigation of all project related impacts to a less than significant level.

In reviewing the application for consistency with the adopted MND, the County considered the following information and studies, among other documents:

- Operations Plan, Addendum to Operations Plan, and Site Plan
- Site Management Plan
- Road Evaluation
- County GIS
- Lake and Streambed Alteration Agreement (LSAA)
- Notice of Applicability and Right to Divert from SWRCB

### **Other CEQA Considerations**

Staff suggests no changes for the revised project.

### **EXPLANATION OF DECISION NOT TO PREPARE A SUPPLEMENTAL MITIGATED NEGATIVE DECLARATION OR ENVIRONMENTAL IMPACT REPORT**

See **Purpose** statement above.

In every impact category analyzed in this review, the projected consequences of the current project proposal are either the same or less than significantly increased than the initial project for which the MND was adopted.

### **Project impact analysis of conformance to the Mitigated Negative Declaration Mitigation Monitoring and Reporting Program**

#### **Mitigation Measure 1: Required setback from tribal cultural resources and tribal consultation process (55.4.11(d) and 55.4.10(n)).**

Project was referred to the Northwest Information Center (NWIC), which indicated a previous Archaeological Survey covered a portion of the project site. Bear River Band was also referred and indicated inadvertent discovery protocol be applied to the project for any ground disturbing activities. Intertribal Sinkiyone Wilderness Council was referred the project and offered no response. All project aspects are greater than 600 feet from any known significant cultural or historic resource. Less than significant impact. The project therefore aligns with the provisions of Humboldt County Code Sections 55.4.11(d) and 55.4.10(n).

Mitigation Measure 2: Curing violations of state, county code (55.4.11(a)).

The project is for existing cultivation and project approval includes a compliance agreement to cure unresolved violations of state or county code.

Mitigation Measure 3: Required setbacks from watercourses, wetlands, and Environmentally Sensitive Habitat Areas (55.4.11(d)).

The project is located within the inland portion of the county and is subject to the setback standards in the Streamside Management Areas and Wetlands Ordinance as well as Chapter 10 (Conservation and Open Space Elements) of the General Plan. The project parcel contains one small intermittent stream, and the project site meets or exceeds the setbacks to streamside management areas.

Mitigation Measure 4: Permitting Tiers and related requirements (55.4.8.2 *et seq.*)

The project is for 3,000 square feet of existing cultivation in an Unclassified Zone (U) zone which requires a Zoning Clearance Certificate. The project complies with the requirements described in 55.4.8.2 *et seq.*

Mitigation Measure 5: Retirement, Remediation, and Relocation Program (55.4.14 *et seq.*)

The project is not participating in the Retirement, Remediation, and Relocation program therefore this mitigation measure does not apply.

Mitigation Measure 6: Cannabis Cultivation on Forest Lands

- This project is for existing cultivation consistent with baseline conditions which is eligible in an Unclassified Zone (U) designation. No increase of cultivation will occur beyond the verified pre-existing cultivation (between Jan. 1, 2006 and Jan. 1, 2016).

Mitigation Measure 7: Use of fertilizer, pesticide, fungicide, rodenticide, or herbicide (55.4.11(j)).

The project operations plan describes measures that will be taken to properly store and handle hazardous materials. Compliance with the operations plan is a condition of project approval. The use of anticoagulant rodenticide is prohibited. The project is conditioned requiring the applicant to provide written compliance with the Certified Unified Program Agency (CUPA) requirements.

Mitigation Measure 8: Diversion of surface water and trucked water (55.4.11(l)-(m)).

The project uses a Point of Diversion (POD) from surface water and is subject to forbearance between May 15 and December 15 annually. 6,300-gal. of hard-sided storage exists for irrigating cannabis, with a condition of project approval requiring an additional 15,000-gal. of storage to be installed to ensure adequate irrigation supply. The project is further conditioned disallowing the use of trucked water except in an emergency.

Mitigation Measure 9: Generator Use (55.4.11(o)).

Emergency backup generator use is proposed as part of this project, with power being provided by Pacific Gas & Electric. Cultivation is approved as outdoor, using no artificial lighting. Any changes to the power for the operation will require a Permit Modification. Generator noise is conditioned to be disallowed until the applicant can demonstrate it/they



operate at or below the 50 decibel (dB) threshold at 100 feet or nearest forested edge, whichever is closer. These conditions will prevent take of any Northern Spotted Owl or Marbled Murrelet, or any other sensitive receptors.

Mitigation Measure 10: Storage of Fuel (55.4.11(p)).

The project is generally conditioned that fuel shall be stored and handled in compliance with applicable state and local laws and regulations and in such a way that no spillage occurs.

Mitigation Measure 11: Performance Standards for Cultivation and Processing Activities (55.4.11(q)-(u)).

Applicant has provided a statement declaring they are an agricultural employer as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 commencing with Section 1140) of Division 2 of the Labor Code). The project includes offsite ancillary processing, and the operations plan describes processing practices and employee safety standards.

Mitigation Measure 12: Performance Standards for Mixed Light Cultivation (55.4.11(v)-(w)).

The project is for outdoor cultivation and does not use artificial light.

Mitigation Measure 13: Humboldt Artisanal Branding Provision (55.4.15).

The proposed project is for 3,000 square feet of Outdoor cannabis cultivation, grown without artificial lighting, and is maintained by the County permit holder. The project is therefore in compliance with this section of County Code and may be eligible for Humboldt Artisanal Branding if organic certification or substantial equivalent is shown/proven.

Mitigation Measure 14: Sunset Clause for applications

The application was received on August 4, 2016, prior to the sunset of the ordinance.

Based upon this review, the following findings are supported:

**FINDINGS**

1. The proposed project will permit an existing cannabis operation and bring the operation into compliance with county and state requirements intended to adequately mitigate environmental impacts.
2. The circumstances under which the project was approved have not changed substantially. There are no new significant environmental effects and no substantial increases in the severity of previously identified effects.
3. For the current proposed project, there has been no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous MND was adopted as complete.

## **CONCLUSION**

Based on these findings it is concluded that an Addendum to the certified MND is appropriate to address the requirements under CEQA for the current project proposal. All of the findings, mitigation requirements, and mitigation and monitoring program of the MND, remain in full force and effect on the original project.