



# COUNTY OF HUMBOLDT

For the meeting of: 8/1/2024

---

File #: 24-1153

---

**To:** Planning Commission

**From:** Planning and Building Department

**Agenda Section:** Consent

**SUBJECT:**

Overland Road, LLC Conditional Use Permit and Special Permit  
Assessor's Parcel Numbers: 217-271-002  
Record Numbers: PLN-12171-CUP  
Blacksburg Area

A Conditional Use Permit for 11,700 square feet of existing mixed light and 4,050 square feet of existing full sun commercial cannabis cultivation. Ancillary nursery uses will not be separate and occur within an existing cultivation greenhouse. Annual water usage is estimated at 160,000 gallons from a point of diversion. Water storage consists of an on-stream pond and 30,000 gallons of proposed tank storage. Power is to be provided by PGE through an eligible renewable energy program augmented by solar. No generators will be used. Processing will occur offsite at a licensed facility. Onsite relocation and restoration of a previous cultivation area is proposed. The project includes a Special Permit for restoration within a Streamside Management Area.

**RECOMMENDATION(S):**

That the Planning Commission:

1. Adopt resolutions (Resolution 24-\_\_) (Attachments 1) which does the following:
  - a. Finds the Planning Commission has considered the Mitigated Negative Declaration previously adopted for the Commercial Medical Marijuana Land Use Ordinance and the Addendum that was prepared for the Overland Road, LLC project (Attachment 3); and
  - b. Finds the proposed project complies with the General Plan and Zoning Ordinance; and
  - c. Approves the Overland Road, LLC Conditional Use Permit subject to the recommended conditions of approval (Attachments 1A).

**DISCUSSION:**

**Project Location:**

This project is in the Blacksburg area, on the West side of Church Road, approximately 0.75 miles

North from the intersection of Alderpoint Road and Church Road, on the property known to be in Section 20 of Township 02 South, Range 05 East, Humboldt Base & Meridian.

**Present General Plan Land Use Designation:**

Rural Community Center (RCC), Timberland (T); 2017 General Plan; Slope Stability: High Instability.

**Present Zoning:**

Timber Production Zone (TPZ).

**Environmental Review:**

An Addendum to a previously adopted Mitigated Negative Declaration has been prepared for consideration per §15164 of the State CEQA Guidelines.

**State Appeal:**

Project is NOT appealable to the California Coastal Commission.

**Major Concerns:**

None.

**Executive Summary:**

A Conditional Use Permit for 11,700 square feet of existing mixed light and 4,050 square feet of existing full sun commercial cannabis cultivation. Ancillary nursery uses will not be separate and occur within an existing cultivation greenhouse. Annual water usage is estimated at 160,000 gallons from a point of diversion. Water storage consists of an on-stream pond and 30,000 gallons of proposed tank storage. Power is to be provided by PGE through an eligible renewable energy program augmented by solar. No generators will be used. Processing will occur offsite at a licensed facility. Onsite relocation and restoration of a previous cultivation area is proposed. The project includes a Special Permit for restoration within a Streamside Management Area.

The applicant is currently out of compliance with their Lake and Streambed Alteration Agreement (LSAA) so the project is conditioned to come into compliance and amend the LSAA per the request of the California Department of Fish and Wildlife. Project conditions require an evaluation by a qualified professional to determine the total maximum volume of the pond and install a measuring device that accurately displays the water volume. The project is also conditioned to require water meters and water usage logbooks. The cannabis operation shall use portable toilets and shall not use the septic system located within the streamside management area. The cannabis operation shall not use the unpermitted well.

The project proposes using the onstream pond for cannabis irrigation storage. Use of the pond for irrigation storage presents some issues that are discussed in detail below. Three options regarding the onstream pond are included in the conditions of approval.

A review of the California Natural Diversity Database indicates the likely presences of obscure bumblebee (*Bombus caliginosus*). This species of bee is considered vulnerable but is not among the four species currently under consideration for listing under the California Endangered Species Act. Per the Database, no other known rare or endangered species in the project area. As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively affect the northern spotted owl or other sensitive species. The project includes conditions at the request of CDFW for an invasive species management plan. The project proposal includes onsite relocation and restoration. The project conditions amend the provided restocking plan to ensure more diversity and monitoring per the request of CDFW.

The project parcel is accessed from a private road that takes access from Alderpoint Road which is county maintained. The previous applicant provided a road evaluation from a licensed engineer concluding that the private road segment is developed to the equivalent of a category 4 standard. The project includes standard conditions regarding encroachment and intersection visibility. It is proposed there will be up to three employees onsite during peak operation.

Comments from CDFW included observations of slope failure and sinkholes from unpermitted grading associated with the cannabis operation. The project is conditioned requiring evaluation of the geologic stability of the area by a qualified professional. Timber conversion associated with the cannabis operation occurred both before and after baseline. The project is conditioned requiring restocking, to the extent practicable for the timber conversion that occurred after baseline. The project is conditioned requiring either a will serve letter from Alderpoint Volunteer Fire Company or the recordation of an Acknowledgement of No Available Emergency Response and Fire Suppression Services. Tribal consultation resulted in the standard inadvertent discovery protocol.

#### **Water Resources:**

Annual water usage is estimated at 160,000 gallons from a point of diversion located at coordinates 40.2837, -123.6365, which is in the on-stream pond. The applicant has provided evidence establishing a water right (Registration H511547) (**Attachment 4D**). Water storage consists of an on-stream pond and 30,000 gallons of proposed tank storage. The applicant estimates the pond to be approximately 1,000,000 gallons. Comments received from CDFW requested an analysis to determine the pond's total water holding capacity. Project conditions require an evaluation by a qualified professional such as a licensed engineer to determine the total maximum volume of the pond (**Condition of Approval A19**). In addition, the LSAA issued by CDFW requires the pond to be kept at 50% capacity and as a result a recommended condition of approval is that the permittee must also install a measuring device that accurately displays the volume of the pond (**Condition of Approval A19**) to verify ongoing compliance with this requirement. The project is conditioned to require water meters and water usage logbooks which must be kept and made available during annual inspection of the cannabis operation (**Condition of Approval A15**).

The applicant has obtained a Lake and Streambed Alteration Agreement (LSAA) (EPIMS-HUM-34121-R1) (**Attachment 4E**). Comments from CDFW state that the current applicant is out of compliance with the LSAA and needs to amend the current LSAA to address sediment delivery from a stream crossing to Waters of the State. The project is conditioned accordingly (**Condition of Approval A9**). The project is also conditioned to comply with the LSAA (**Condition of Approval C16**).

The project referral to the Division of Environmental Health (DEH) resulted in a request for various conditions of approval. The project is conditioned requiring the use of portable toilets for cultivation activities unless a septic system is permitted in association with a permitted structure (**Condition of Approval B1**). It is noted there is a septic system currently on site next to the residence but the compliance and permitting status of the system is unknown and the system is located within a streamside management area. This septic system shall not be used by the cannabis operation (**Condition of Approval B1**).

An unpermitted groundwater well is also present on the property. The DEH also requested the unpermitted well on the property be legalized or destroyed. Since the Operations Plan states the well will not be used for cannabis irrigation, there is no nexus to add a condition of approval to the cannabis cultivation Conditional Use Permit so an Informational Note has been added instead regarding legalization or destruction of the well. The project does contain a condition prohibiting use of the well for cannabis irrigation (**Condition of Approval B2**) consistent with the provided Operation Plan. The applicant has provided a copy of the Notice of Applicability and a Site Management Plan (**Attachments 4G and 4H**) demonstrating enrollment in Water Board General Order No. WQ 2019-0001-DWQ.

The irrigation source is an onstream pond that is currently proposed as water storage for the forbearance period during which diversions must forbear from use. The applicant has the option of either a) using the pond as storage and pumping from it during the regular diversion forbearance period, or b) using the pond as a diversion and pumping to some other storage method but then forbearing during the regular diversion forbearance period. The applicant's current proposal, which is in alignment with the issued LSAA, is to utilize the pond as storage. When permitted to be used as storage the transfer of water from the pond for cannabis irrigation is limited to the period between April 1 to October 31. When using an onstream pond for storage, irrigation water may not be transferred from the pond between November 1 and March 31 per State Water Board policy. During the transfer season of April 1 to October 31, Water Board Policy requires 100% bypass flow and therefore the project is conditioned requiring design and installation of a bypass system to the satisfaction of the Water Board and CDFW (**Condition of Approval A19**).

The project Operations Plan includes an irrigation schedule that states irrigation water will be used in March and November, which is outside the authorized transfer season. Diverted water must be put to beneficial use within a certain period after direct diversion. Interpretation by the State has varied from within 30 days to within the same season. This makes storing water transferred from the pond

into tanks for later use problematic, particularly year-over-year for March. The project includes a condition of approval requiring documentation demonstrating review and approval by the Water Board to allow transfer of pond irrigation water to tanks for later use outside the transfer season and year-over-year. If authorization from the Water Board is not obtained, cultivation irrigation will be restricted to the transfer season and the Operations Plan cultivation and irrigation season schedule must be updated and irrigation water cannot be stored in tanks season to season (**Condition of Approval A19**). Installation of rainwater catchment for irrigation for the March and November months is an option available to the applicant if authorization from the Water Board is not obtained. Per the Operations Plan, 19,200 gallons is needed in March and November.

Review of aerial imagery indicates the amount of water in the pond at the beginning of the cultivation season varies year to year. Because the amount of water in the pond may vary year to year due to rainfall, evaporation, absorption, etc, the project is conditioned requiring annual water reporting to the Planning and Building Department and CDFW at the beginning of the transfer season, April 1, of every year during active cultivation seasons. The annual water availability report will include the estimated total of water in gallons available for cannabis cultivation with a comparison to other allocations such as fire protection or habitat maintenance. If insufficient irrigation water is available to meet the water budget described in the Operations Plan, the amount of cultivation for that season will be proportionally reduced (**Condition of Approval B2**).

Per the terms of the Lake or Streambed Alteration Agreement (EPIMS-HUM-34121-R1) (**Attachment 4E**), section 2.21, between April 1 and September 1, water transfer from the pond must cease once the pond volume is one half (50%) of the maximum pond volume to protect amphibians. Per the legal description of Parcel Four in the grant deed (2022-003245) (**Attachment 4L**), the applicant is entitled to take only 50% of the water from the pond. The adjacent landowner has the rights to the other 50% of the pond. Because the adjacent landowner may be able to use the water for uses like habitat or aesthetics or fire protection without obtaining an LSAA, the applicant's LSAA requiring 50% be left for habitat value presents some concern. The applicant was asked to explain how it is going to maintain 50% pond capacity between April 1 and September 1 per the LSAA when it only has deeded rights to 50% of the pond when irrigation water transfer from the pond is limited to between April 1 and October 31 per Water Board policy. The applicant responded in a May 2, 2024 letter (**Attachment 4M**). The primary argument in the May 2 letter is that the neighboring landowner that has deeded rights to the other 50% of the pond will be subject to a future LSAA which should be presumed to contain the same terms to maintain 50% pond volume to protect wildlife. Staff agrees that this is a possible scenario, however, as mentioned above it is not the only possible scenario and it depends on the actions and choices of the neighboring landowner and CDFW. The adjacent landowner could choose not to obtain an LSAA, for example, reserving the pond exclusively for emergencies such as a fire which would bypass the need for an LSAA. The Planning and Building Department has not received any documentation from the adjacent landowner demonstrating their intent to get an LSAA nor documentation from CDFW that a future LSAA for the neighbor would mirror the agreement signed by the applicant. Further, neither the Planning Department nor the applicant can compel any

action on the part of the adjacent landowner.

The project is conditioned if the adjoining landowner exercises their deeded rights to the pond in a manner that prevents the permit holder from meeting the obligations of the LSAA, all cultivation must cease and the permit holder shall apply for a permit modification (**Conditional of Approval A20**).

**Biological Resources:**

A review of the California Natural Diversity Database indicates the likely presences of obscure bumblebee (*Bombus caliginosus*). This species of bee is considered vulnerable but is not among the four species currently under consideration for listing under the California Endangered Species Act. Per the Database, no other known rare or endangered species in the project area. The nearest mapped Northern Spotted Owl activity centers are (HUM1006) approximately 1.51 miles to the southwest, (HUM1140) approximately 1.63 miles to the northeast, and (HUM1139 and HUM0894) approximately 1.65 miles to the southeast. The proposed project will utilize the pre-existing disturbed areas created prior to baseline. The project has been conditioned to ensure supplemental lighting associated with the nursery and mixed light cultivation adheres to Dark Sky Association standards including security lighting (**Condition of Approval C3**). Permit conditions of approval also prohibit using synthetic netting (**Condition of Approval C5**), ensure refuse is contained in wildlife-proof storage (**Condition of Approval C6**), and prohibit use of anticoagulant rodenticides to further protect wildlife (**Condition of Approval C8**). As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively affect the northern spotted owl or other sensitive species.

During an April 10, 2024 inspection, CDFW observed and provided comment describing the cultivation site as highly invaded by Yellow starthistle (*Centaurea solsalis*) due to uncontained imported soil. The project is conditioned requiring the creation and implementation of an invasive species removal and monitoring plan that includes removal of the Yellow starthistle (**Condition of Approval A10**). Comments from CDFW state that scattered trash and refuse associated with the cannabis operation was also observed during its inspection. The project is conditioned requiring all refuse be cleaned up and disposed of at a waste management facility. Documentation demonstrating this has been completed must be provided to the satisfaction of CDFW and the Planning and Building Department no later than October 15, 2024 (**Condition of Approval A6**). Comments from CDFW also state that imported soil was partially contained with degrading plastic tarps. The project is conditioned requiring the tarps be disposed of at a waste management facility and all uncontained imported soil either be removed or fully contained using best management practices. Documentation demonstrating this has been completed must be provided to the satisfaction of CDFW and the Planning and Building Department no later than October 15, 2024 (**Condition of Approval A7**).

The project site contains multiple unnamed Class III (Ephemeral) and Class II (Intermittent or Perennial) tributaries to Larabee Creek. The site plan depicts all cannabis related structures sufficiently set back from streamside management areas and riparian buffers.

**Onsite Relocation and Restoration:**

There is an historic cultivation area proposed for relocation that is not depicted on the Site Plan located in the southwestern corner of the parcel. The project is conditioned requiring an update to the Site Plan to depict the restoration area (**Condition of Approval A8**). The applicant provided a Justification for Relocation dated February 28, 2019 prepared by Timberland Resource Consultants (**Attachment 4I**). The report states the relocation is justified based, in part, on the slope of the disturbed area and proximity to a surface water body. The previous cultivation will be relocated to the central cultivation area as full sun cultivation.

The applicant has provided a Timber Restocking Plan for approximately 0.15 acres for the historic cultivation area (**Attachment 4J**). The plan calls for planting 65 Douglas-fir trees. Because the area includes a streamside management area, a biological assessment was requested. The applicant provided a letter from a biologist (**Attachment 4K**) who reviewed photos of the area supplied by the applicant. The biologist did not visit the site or provide a protocol level assessment. Comments received from CDFW requested more diversity in replanting the area, invasive species management for Himalayan blackberry (*Rosaceae rubus*), and three years of monitoring and success criteria. In lieu of a biological assessment, staff conducted a telephone consultation with the Biologist, Kyle Wear. A consensus was reached to augment the restocking plan to include proportional replanting of at least three different species of either Douglas-fir, Live Oak, Tan Oak, Bay, or Madrone. Restocking would be 10 feet apart with 55% survival criteria with three years of monitoring per the restocking plan. A point count stocking sampling survey by a Registered Professional Forester will be required each year until the monitoring period is successfully completed. If less than 55% of the planted area meets the 300-point count minimum described in the restocking plan, the replanting process will be repeated until there is 55% survival for three consecutive years (**Condition of Approval A13**).

**Energy:**

Power is to be provided by PGE through an eligible renewable energy program augmented by solar. No generators will be used (**Condition of Approval B3**). The permittee may cultivate cannabis within the approved greenhouses as light deprivation with no artificial light until a PGE connection is established (**Condition of Approval B6**).

**Access:**

The project parcel is accessed from a private road that takes access from Alderpoint Road which is county maintained. The previous applicant provided a road evaluation from a licensed engineer concluding that the private road segment is developed to the equivalent of a category 4 standard (**Attachment 4F**). Per the Operations Plan, there is a maximum total of three employees at peak operation. The project Site Plan depicts only two parking spaces so the project is conditioned requiring a Site Plan revision to depict the location of parking areas for all employees (**Condition of Approval A8**). The project was referred to Public Works which requested standard conditions of approval relating to road intersection visibility and encroachment to the county-maintained road

**(Conditions of Approval A18 and B5).**

**Geologic Suitability:**

The project parcel is mapped in the County GIS as high instability. The existing cultivation is in areas ranging from 15% slope or less. No new grading is proposed or authorized to implement the project. Based on review of historic aerial imagery it appears that grading occurred at multiple times ranging from the creation of the original flat to additional grading after baseline when structures were replaced and new structures were added. After the fact grading permits are required for grading that was done previously without permits (**Condition of Approval A16**). Comments from CDFW from an April 10, 2024 inspection state that slope failure and sink holes associated with the grading of the cannabis cultivation site were observed. Therefore, a condition of approval has been added to the project requiring a licensed engineer to evaluate the areas of concern to determine if there is any immediate risk to health, safety, or the environment (**Condition of Approval A5**). The engineer's report must include recommendations, if any are needed, to stabilize the site. If the report recommends immediate measures, such as, but not limited to, an erosion and sediment control plan, those recommendations must be implemented to the satisfaction of the Planning and Building Department prior to October 15, 2024.

**Timber Conversion:**

Review of aerial imagery indicates that conversion of timberland for the purposes of cannabis occurred multiple times both before and after baseline. According to a Timberland Conversion Evaluation Report (**Attachment 4D**) dated August 26, 2022 conducted by Blair Forestry Consulting, there is an open Non-Industrial Timber Management Plan (NTMP) (1-98NTMP-029-HUM) for the property. The Evaluation Report concludes that in or around 2014 an approximate 1.3-acre clearing was created on the property. Because this clearing was conducted consistent with the NTMP it complied with the Forest Practice rules. Because the original clearing was conducted prior to baseline, it can be used for cannabis operations. The Evaluation Report concludes that additional timber conversion occurred between 2018 and 2019. As noted below, staff review of aerial imagery estimates the additional conversion occurred in October or November of 2019. The Evaluation Report estimates the amount of additional conversion that occurred in the central area in 2019 to be approximately 1.0 acres. Because this timber conversion occurred after baseline for the purposes of cannabis cultivation, the area affected in 2019 must be restocked to the extent practicable without encroaching within fuel fire safe distances of authorized structures (**Condition of Approval A11**). Referral to CalFire resulted in a response of no comment.

**Security and Safety:**

Per the project Operations Plan, access to the parcel is gated and locked and security cameras are proposed. The Site Plan provided by the applicant depicts an emergency vehicle turnaround as well as water storage dedicated to fire suppression. The project was referred to the Alderpoint Volunteer Fire Company (AVFC) which did not respond. The project is conditioned requiring either a will serve letter from AVFC or the recordation of an Acknowledgement of No Available Emergency Response and Fire



Suppression Services **(Condition of Approval A2)**.

**Tribal Consultation:**

The project was referred to the Northwest Information Center and the Bear River Band of the Rohnerville Rancheria. No Cultural Resource Survey was conducted. Consultation with the Bear River Tribal Historic Preservation Officer resulted in a request for the standard inadvertent discovery protocol **(Condition of Approval C1)**.

**Consistency with Humboldt County Board of Supervisors Resolution No. 18-43:**

Approval of this project is consistent with Humboldt County Board of Supervisors Resolution No. 18-43 which established a limit on the number of permits and acres which may be approved in each of the County's Planning Watersheds. The project site is in the Lower Eel Planning Watershed, which under Resolution 18-43 is limited to 336 permits and 116 acres of cultivation. With the approval of this Conditional Use Permit, the total approved permits in this Planning Watershed would be 78 permits and the total approved acres would be approximately 36.94 acres of cultivation.

**Property History:**

The parcel is zoned Timber Production Zone (TPZ) with a 2015 cultivation area baseline of 15,750 square feet occurring in two areas. Approximately 12,775 square feet of cultivation was occurring in a pre-existing clearing near the center of the parcel and approximately 2,975 square feet of cultivation was occurring in the southwest corner of the property partially within a streamside management area. Parcels zoned TPZ are not eligible for intensification of cannabis uses beyond baseline. The configuration of cultivation and the number and type of structures has changed multiple times since baseline. Sometime between September 2018 and June 2019 the original applicant, Pirin, LLC replaced the three hoopouses in the central area with Agra Tech greenhouses and added new accessory structures. During this 2018 to 2019 timeframe a two story, approximately 4,900 square foot structure was built by the original applicant without permits south of the central area. This building is labeled as Domestic Shed 4 on the Site Plan **(Attachment 1C)**. It has been determined that this structure was built for the purpose and used for cultivation purposes exceeding the baseline conditions in TPZ. The project is conditioned to remove this structure **(Condition of Approval A12)**.

Sometime between November 2019 and March 2020 a fourth greenhouse, approximately 4,600 square feet in size, was constructed without permits in the central area. The project is conditioned to remove this greenhouse **(Condition of Approval A12)**.

On March 23, 2021 a law enforcement warrant was served on the parcel in part because the applicant at that time, Pirin, LLC, was cultivating without an interim permit or a state license and was cultivating more than baseline. Other agency participating in the warrant included the Code Enforcement Unit, California Department of Fish and Wildlife (CDFW), the Regional Water Quality Control Board (RWQCB), and County Hazmat. On March 5, 2021 the CDFW issued a Notice of Violation (NOV) **(Attachment 4B)**. On May 20, 2021 the RWQCB issued a NOV **(Attachment 4C)**. The project is

conditioned requiring the permittee to provide documentation from CDFW and RWQCB demonstrating that the NOVs have been resolved to their satisfaction (**Condition of Approval A14**).

**Environmental Review:**

Environmental review for this project was conducted and based on this analysis, staff concludes that all aspects of the project have been considered in a previously adopted Mitigated Negative Declaration (MND) that was adopted for the CMMLUO. Staff has prepared an addendum (Attachment 3) to the MND for consideration by the Planning Commission.

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies and all responding agencies have either responded with no comments, comments, or recommended approval or conditional approval. (Attachment 5)

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could elect to add or delete conditions of approval. The Planning Commission could deny approval if unable to make all the required findings. Staff has concluded the required findings in support of the proposal as conditioned can be made. Consequently, Staff does not recommend further consideration of these alternatives.

ATTACHMENTS:

1. Draft Resolution
  - A. Conditions of Approval
  - B. Operations Plan
  - C. Site Plan
2. Location Map
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
  - A. Timber Conversion Evaluation Report
  - B. CDFW Notice of Violation
  - C. RWQCB Notice of Violation
  - D. Right to Divert and Use Water
  - E. Lake and Streambed Alteration Agreement (LSAA)
  - F. Road Evaluation
  - G. Notice of Applicability
  - H. Site Management Plan

- I. Justification for Relocation
  - J. Timber Restocking Plan
  - K. Streamside Management Area Letter
  - L. Grant Deed
  - M. Water Eligibility Response Letter
5. Referral Agency Comments and Recommendations
- A. Division of Environmental Health
  - B. Public Works
  - C. CDFW
6. Watershed Map

Applicant

Overland Road, LLC  
Ty Robin Collins  
Steven Breitenstein  
1650 Central Ave Ste. C  
McKinleyville CA 95519

Owner

Overland Road, LLC  
1650 Central Ave Ste. C  
McKinleyville CA 95519

Agent

None

Please contact Steven A. Santos, Senior Planner, at [sasantos@co.humboldt.ca.us](mailto:sasantos@co.humboldt.ca.us) or (707)268-3749 for questions about this scheduled item.