




COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT

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Memorandum

To: Humboldt County Planning Commission

From: John H. Ford, Director of Planning and Building 

Date: December 14, 2022

Subject: Response to Mark Thurmond Letter Dated January 26, 2022

The letter presented by Mark Thurmond argues that the County's CEQA process is inadequate for several reasons. First the County is obligated to provide the environmental documents being considered as part of project approval (and does not), second alleges the county is not providing evidence of compliance with mitigation measures and third does not consult with state agencies. Few specific examples are provided for these conclusions. Each will be addressed.

Consideration of Environmental Documents

The letter starts with the statement: *I write to ask that documents and information related to Negative Declarations (MND), which is required by CEQA be included in packets for permits to be considered ...in all future cannabis permit considerations.* This is followed by information quoted from the CEQA statute and Guidelines identifying that the lead agency must determine the significance of all environmental impacts, describe feasible and enforceable mitigation measures, identify who will be responsible for implementation of the mitigation measures and include all the mitigation measures in the environmental document prior to public review. All of this must be presented to the Planning Commission and the public prior to approving an application. The author makes the statement: *"These requirements have not been fulfilled, either in part or in total, and, as a consequence cannabis permit applications have not received the necessary and appropriate review."*

The letter provides no examples to support the claim that these requirements are not met. It is standard practice for a Mitigated Negative Declaration and an EIR to include an identification of the potentially significant impacts and how these impacts can be mitigated to a less than significant level. The Initial Study cannot find that the impacts have been reduced to a level of less than significant without the impact and mitigation being disclosed. Mitigation Measures are implemented through a Mitigation Monitoring and Reporting Plan which is approved as part of a project and are implemented with the conditions of approval.

Impacts evaluated in an environmental document are related to new development. Pre-existing development (even unpermitted existing development) is considered part of the baseline condition and is exempt from environmental review (CEQA Guidelines Section 15301). The California Department of Food and Agriculture (Now Department of Cannabis Control) does not accept exemptions as an

environmental determination, but they do accept use of a program level environmental document. For the County this would be the Mitigated Negative Declaration prepared for the CMMLUO the EIR prepared for the CCLUO. To document this, the County prepares an Addendum for either the MND Prepared for the CMMLUO or EIR prepared for the CCLUO. The mitigation measures for both the MND and EIR are embedded in the respective ordinances. The Addendum is always attached to the staff report. The original environmental documents have been provided to the Planning Commissioner and are to be considered with the Addendum. These are also available online at [Medical Marijuana Land Use Ordinance & Commercial Cannabis Land Use Ordinance | Humboldt County, CA - Official Website \(humboldt.gov.org\)](https://www.humboldt.gov/220/medical-marijuana-land-use-ordinance). If the request is for the Program Documents to be included in the agenda packets this should have been being provided and will be re-instituted.

No Documentation, Justification or Evidence for Cannabis MND, an Example

The letter identifies that many applications involve surface water diversion, and that the FEIR prepared for the CCLUO evaluates the impacts of surface water diversions including a mitigation measure that cannabis cultivation be permitted at diversion rates established by water right and that there is a provision in Mitigation Measure 3.8.5 that *the State Water Board would monitor instream flows during the dry season to determine whether the number or location of groundwater diversions to determine whether imposition of a groundwater forbearance period or other measures. The State Water Board will notify cannabis cultivators the possibility of a groundwater forbearance period or other measures may be imposed to address the low flow condition.* The letter writer concludes there is not evidence of this in the permit packets.

There are a couple of important considerations, first is not all permits are subject to the CCLUO and thus are not under the Mitigation Measures contained in the EIR for the CCLUO. During consideration of the CCLUO, the Planning Commission added the following language to Section 55.4.3.1 of the CCLUO:

Applications for Commercial Cannabis Activity land use permits filed on or before December 31, 2016 shall be governed by the regulations in effect at the time of their submittal, except as follows and is otherwise prescribed herein. Zoning Clearance Certificate applications for Open Air Cultivation filed on or before December 31, 2016 shall be controlled by the provisions of section 55.4.6.7 of this Section.

It should also be observed that the review process is very focused on not permitting surface diversions, except where it is a baseline condition. Both the CMMLUO and the CCLUO address surface diversions as follows:

CMMLUO:

Section 55.4.8.2.1 (which addresses new cultivation) ... *on parcels with Prime Agricultural Soils, in zoning districts RA, U, FP, DF, AG, or AE, on slopes of 15% or less, and with documented current water right or other non-diversionary source of irrigation water (e.g., municipal, public utility, or permitted well), subject to the conditions and limitations set forth in this section.*

Section 55.4.11

l) Where surface water diversion provides any part of the water supply for irrigation of cannabis

cultivation, the applicant shall either: 1) consent to forebear from any such diversion during the period from May 15th to October 31st of each year and establish on-site water storage for retention of wet season flows sufficient to provide adequate irrigation water for the size of the area to be cultivated, or 2) submit a water management plan prepared by a qualified person such as a licensed engineer, hydrologist, or similar qualified professional, that establishes minimum water storage and forbearance period, if required, based upon local site conditions, or 3) obtain approval from the RWQCB through enrollment pursuant to NCRWQB Order No. 2015-0023 and/or preparation of a Water Resources Protection Plan.

m) Water is to be sourced locally (on-site) and trucked water shall not be allowed, except for emergencies. For purposes of this provision, "emergency" is defined as: "a sudden, unexpected occurrence demanding immediate action."

CCLUO:

55.4.6.3.2 Water Source

Irrigation shall exclusively utilize Stored Water from Non-Diversiory Sources or water from a Public or Private Water Supplier. Water from on-site greywater systems is also authorized for year-round use. Dry Farmed Outdoor or Mixed Light cultivation sites may utilize Irrigation from Diversiory Sources for propagation areas and transplantation. Irrigation water sourced from Diversiory Sources may be permitted with a Special Permit pursuant to the Streamside Management Area Ordinance, Humboldt County Code Section 314-61.1., and subject to the Performance Standards for Diversiory Water Use.

The County Ordinances and process take care to ensure that surface waters are not adversely affected. If a diversionary source of water is authorized for pre-existing cultivation that comes with the requirement to forebear (pump and store water during the winter), and so are not allowed to extract water during the dry season, and thus there is no impact to instream flows.

The County in the review process has become increasingly sophisticated in the review of groundwater in both CMMLUO and CCLUO applications. The level of detail in the current geologic reports addresses connectivity to surface water, impacts to other wells, impacts to springs and other water features, and identifies how much recharge is available to off set the water being used for irrigation.

The mitigation from both the MND of the CMMLUO and the EIR for the CCLUO are enforceable in that they are embedded in the ordinances.

Communication with State Agencies

The letter ends with an accusation that the County does not engage with State Agencies. This is not true; we engage with the State agencies on a regular basis. The Planning Commission has experienced the involvement of CDFW in the hearing process, and knows the efforts taken to collaborate with CDFW. We regularly coordinate with the Water Board, the Regional Water Quality Control Board and with the Department of Cannabis Control.